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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 LUIS PINEDA, et al.,

4 Plaintiffs,

5 v.

15 CV 3774 (GBD)

6 FRISOLING, INC., et al.,

7 Defendants.

8 -----x

New York, N.Y.
March 17, 2017
9:45 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge

13 APPEARANCES

14 MICHAEL FAILLACE & ASSOCIATES, P.C.

15 Attorneys for Plaintiffs

16 BY: GERRALD ELLIS

JOSHUA S. ANDROPHY

17 KUBLANOVSKY LAW, LLC

Attorneys for Plaintiffs

18 BY: EUGENE D. KUBLANOVSKY

ALLISON MATTERA CHARLES

H3h6pin11

1 H3h6pin11

2 (In open court)

3 THE COURT: Are we ready to proceed with the next
4 witness?

5 MR. KUBLANOVSKY: Yes, your Honor. Just some
6 housekeeping matters.

7 THE COURT: Yes.

8 MR. KUBLANOVSKY: I wanted to address an exhibit that
9 was introduced by defendants during Mr. Pineda's testimony and
10 this was his declaration in support of plaintiffs' opposition
11 to summary judgment.

12 THE COURT: What exhibit?

13 MR. KUBLANOVSKY: This was the declaration of Luis
14 Pineda in opposition to defendants' motion for summary
15 judgment.

16 THE COURT: Exhibit number?

17 MR. KUBLANOVSKY: D, as in David.

18 THE COURT: Is that the one that is already in the
19 book?

20 MR. KUBLANOVSKY: Yes, sir.

21 THE COURT: So you are moving the Exhibit D into
22 evidence?

23 MR. KUBLANOVSKY: Yes.

24 THE COURT: Any objection?

25 MR. ELLIS: No, your Honor.

H3h6pin11

Migliorini - direct

1 THE COURT: Admitted.

2 (Defendants' Exhibit D received in evidence)

3 THE COURT: Are we ready to proceed?

4 MR. KUBLANOVSKY: Yes.

5 THE COURT: Why don't you call the next witness.

6 MR. KUBLANOVSKY: Defendants call Peter Migliorini to
7 the stand.

8 PETER MIGLIORINI,

9 called as a witness by the Defendants,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KUBLANOVSKY:

13 Q. Mr. Migliorini, can you please state your name and address
14 for the record?

15 A. Peter Migliorini. 455 Hudson Street, apartment 27, New
16 York, New York 10014.

17 Q. Sir, where were you born and raised?

18 A. I was born 455 Hudson Street, apartment 27, New York, New
19 York, and I was raised there.

20 Q. Where do you currently live?

21 A. The same apartment.

22 Q. Have you always lived there?

23 A. Yes.

24 Q. Can you please tell us your educational background and job
25 history beginning with college?

H3h6pin11

Migliorini - direct

1 A. I attended two years of college at Iona College in New
2 Rochelle. And I didn't hear the --

3 Q. Then you work history after college.

4 A. I started a job at my high school -- my old high school
5 Xavier High School in the alumni relations department.

6 THE COURT: Can you just tap that mic. Is it on?

7 THE WITNESS: I don't think so. There is no light.

8 THE COURT: You may continue.

9 Q. You were describing your work history.

10 A. I worked at my old high school, Xavier High School, in the
11 alumni relations department. And after that I started to work
12 at my dad's restaurant.

13 Q. Your dad's restaurant is pick low Anglo?

14 A. Yes, it is.

15 Q. When did you start working at Piccolo Angelo?

16 A. Approximately 1993. Late 1993, early 1994.

17 Q. What was your job at that time at Piccolo Angelo?

18 A. I was a waiter.

19 Q. How many days per week did you work when you started
20 working there?

21 A. Three days.

22 THE COURT: When did you say you started working
23 there?

24 THE WITNESS: Approximately 1993. Late 1993, early
25 1994.

H3h6pin11

Migliorini - direct

1 THE COURT: Thank you.

2 Q. What kind of restaurant is Piccolo Angolo?

3 A. It's a family-owned Italian restaurant.

4 Q. Where is it located?

5 A. On the corner of Hudson and Jane. The exact address is 621
6 Hudson Street.

7 Q. Relatively to the size of the courtroom, how big is it?

8 A. The entire restaurant, including the kitchen, is probably
9 from beginning of the jury box back to the behind the judge's
10 desk.

11 Q. How many tables does it have to seat customers?

12 A. 23.

13 Q. I would like to show you a document at this time.

14 MR. KUBLANOVSKY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. If you can take a moment to flip through this document.

17 MR. ELLIS: Your Honor, I object to this document at
18 least as far as it contains photographs of these New York Labor
19 Law posters. This is the first we are seeing it.

20 THE COURT: Which?

21 MR. KUBLANOVSKY: I don't recall any objection being
22 made to the production or nonproduction of these documents.

23 THE COURT: Production or nonproduction.

24 MR. KUBLANOVSKY: Well, yeah. This is the first time
25 I am hearing about it and --

H3h6pin11

Migliorini - direct

1 THE COURT: Were these produced?

2 MR. KUBLANOVSKY: These photographs were not produced.

3 THE COURT: When you say "the production," what is it
4 that you say you produced?

5 MR. KUBLANOVSKY: We produced documents. I don't
6 recall, one, a request made. They may very well have made that
7 request, but I don't recall standing here because I don't have
8 the document request before me. I also don't recall because
9 there wasn't an objection to our nonproduction of anything in
10 this case.

11 MR. ELLIS: How am I to know what to object to if I
12 don't know what it is?

13 THE COURT: The first question the answer to that is
14 it depends on what you asked for.

15 MR. ELLIS: Sure. I don't have my copy of my document
16 production request here; but I can assure you that we and my
17 firm use the same standard document demand, and they do include
18 request for production of any posters such as this --
19 photographs.

20 MR. KUBLANOVSKY: To the extent that it does contain a
21 picture of the photo, it goes to solely the testimony earlier
22 in the case regarding the walk-in closet and what was posted
23 there.

24 THE COURT: I remember the testimony. I already have
25 the testimony.

H3h6pin11

Migliorini - direct

1 MR. KUBLANOVSKY: Right.

2 THE COURT: Quite frankly, Mr. Ellis, I am not sure
3 why you are objecting. You have to have two things to object:
4 A ground to object and a reason.

5 MR. ELLIS: Well, if it is being presented for the
6 truth of the matter asserted that these in fact existed at
7 whatever time -- I mean, there is no timestamp.

8 THE COURT: What difference does that make to you? As
9 a matter of fact why does it hurt you?

10 MR. ELLIS: Insofar as they are notices, your Honor.

11 THE COURT: Insofar as both the employees and the
12 employer were aware of the obligations under the --

13 MR. ELLIS: Right. Yes.

14 THE COURT: What difference does that make? Way do
15 you say you would be prejudiced by that rather than --

16 MR. ELLIS: Because we demanded production of this and
17 it wasn't produced.

18 THE COURT: Well, that is not prejudice. I am not
19 sure why you are objecting.

20 MR. ELLIS: Fine, your Honor.

21 THE COURT: If you want to press your objection, fine.
22 Quite frankly I don't have any evidence in this case that the
23 plaintiffs were not aware that they had minimum-wage rights.

24 MR. ELLIS: Fair.

25 THE COURT: Quite frankly at this point for my

H3h6pin11

Migliorini - direct

1 purposes, its only relevance at this point seems to be whether
2 the employer was aware of their obligations.

3 MR. ELLIS: Fair enough.

4 THE COURT: I already resolved that the plaintiffs are
5 not saying he didn't tell us what our rights were or didn't
6 post our rights. We already had that testimony. We had your
7 testimony from witnesses they were posted with regard to the
8 rights of the employees.

9 MR. ELLIS: I will withdraw the objection.

10 THE COURT: If you want to articulate what you are
11 fighting about, I will hear you.

12 MR. ELLIS: I will withdraw the objection.

13 THE COURT: I am going to put to rest whether or not
14 the employees knew what their rights were, the employer knew
15 what his obligations were, and the rights of the employees were
16 clearly posted by the employer and fully aware by all. That is
17 what I take it for.

18 MR. ELLIS: Understood. My objection is withdrawn.

19 MR. KUBLANOVSKY: Thank you, your Honor.

20 BY MR. KUBLANOVSKY:

21 Q. Mr. Migliorini, have you seen these photographs before?

22 A. Yes, I have.

23 Q. Did you take these photographs?

24 A. Yes, I did.

25 Q. What do these photographs show?

H3h6pin11

Migliorini - direct

1 A. The first three are the views from the different kitchen
2 stations and the kitchen itself -- the entirety of the kitchen
3 prep table and refrigerators and salad prep tables.

4 The one after that was the basement area where the
5 employees would go downstairs to change and our storage area as
6 well.

7 The following one is the labor law posters that we had
8 on our walk-in box door and the disability notice door.

9 The following one is the cellar stairs going up to the
10 street.

11 The one after that is the cellar stairs going down to
12 the street.

13 The one after that is the dishwasher's room with the
14 dishwashing machine.

15 The one after that is also the dishwasher's room at a
16 difference angle with the dishwashing machine.

17 The one after that is a view into the dining room from
18 a window where the salad prep area was and of the storage area
19 for all of the kitchen spices and various other sundry that
20 they needed in the kitchen. That is the salad prep area, the
21 refrigerator where all the salad ingredients are kept.

22 The next one is the view into the kitchen from the
23 same window from the dining room.

24 The following one is the box where any cash tips were
25 placed at any given time.

H3h6pin11

Migliorini - direct

1 The next one is the cash register, credit card machine
2 area. Also, to the left is the bread-cutting table and coffee
3 machine area all combined.

4 The next one is service bar where we kept the wine and
5 beer and ice.

6 The next one is the service window where food would be
7 placed when it was ready, viewing from the dining room into the
8 kitchen.

9 The second one is also another picture just -- it was
10 difficult to get the whole window. That is the bottom part.
11 It was a three-leveled -- three-tiered shelving system. That
12 is our printer for our tickets that go into the kitchen. That
13 is the sink used to wash the pots and pans throughout the
14 evening.

15 That is another view of the window from the salad prep
16 area out into the dining room to the cash register area. You
17 can partially see the computer screen there. That is where the
18 cash register is and the service bar.

19 This is another view out into the dining room again
20 from the salad service area -- salad prep area.

21 That is a picture of the main dining room -- the right
22 side of the main dining room.

23 That is a view from the cash register area of the
24 dining room -- the entire dining room.

25 That is a view from the front door to the right side

H3h6pin11

Migliorini - direct

1 of the dining room.

2 That is just another view of the right side of the
3 dining room from the middle of the dining room.

4 That is the view into the restaurant from our front
5 door where we hang our open and closed sign.

6 That is a sticker that we have on the door posting our
7 hours of operation.

8 Q. Thank you, sir.

9 A. You are welcome.

10 Q. Sir, when you started working at Piccolo Angolo, who owned
11 the restaurant?

12 A. My dad and my uncle Costanzo.

13 Q. What year did your father and your uncle open the
14 restaurant?

15 A. November 14th, 1992.

16 Q. With respect to your father, had he previously worked in
17 the restaurant business?

18 A. Yes, he did. He came from a family of restaurateurs in
19 Italy. He went to Mendoza, Argentina and worked for a family
20 restaurant in Mendoza, Argentina before coming to New York as
21 an immigrant and worked in various Italian restaurants around
22 the city.

23 And then he and his brother opened a restaurant on
24 Cedar and West, and they were there for almost 20 to 25 years.
25 I am not sure of the exact date because I was not born when

H3h6pin11

Migliorini - direct

1 they opened that restaurant. Then they closed that restaurant
2 and they proceeded to open Piccolo Angolo.

3 Q. Where was your father born?

4 A. Liguria, Italy.

5 Q. Does your father speak Spanish?

6 A. Yes. He did from his time in Mendoza, Argentina.

7 Q. Do you know what positions your father worked in the
8 restaurant industry?

9 A. From hearing stories from him, he did various jobs in
10 various restaurants. He was a busboy. He was a waiter. He
11 was a maître d'. He was a cook. He did anything when he came
12 to America to have a job. He would take any position in a
13 restaurant.

14 Q. What year did he come to the United States?

15 A. I am not exactly sure on that. It was in the early '60s.

16 Q. What were the operating hours for restaurant when you
17 started working?

18 A. The restaurant was open on Tuesday through Thursday from
19 5:00 p.m. to 11:00 p.m. Friday and Saturday from 5:00 p.m. to
20 11:30 and Sunday 4:00 p.m. to 10:00 p.m. We were closed on
21 Monday.

22 Q. Were those the same hours --

23 THE COURT: Sorry. Give me those hours again.

24 THE WITNESS: Yes, your Honor.

25 Tuesday through Thursday 5:00 p.m. to 11:00 p.m.

H3h6pin11

Migliorini - direct

1 Friday and Saturday 5:00 p.m. to 11:30 and Sunday 4:00 to 10:00
2 p.m. We were closed on Mondays.

3 THE COURT: Tuesday through Thursday until 10:30.
4 Friday and Saturday to 11:30?

5 THE WITNESS: 11:00 p.m. Tuesday through Thursday.

6 THE COURT: Tuesday through Thursday 11:00 p.m.?

7 THE WITNESS: Yes.

8 THE COURT: Friday and Saturday 11:30?

9 THE WITNESS: Correct.

10 THE COURT: Sunday 10:00?

11 THE WITNESS: Correct.

12 BY MR. KUBLANOVSKY:

13 Q. Did those hours ever change?

14 A. Only recently I did change Sunday to 5:00 p.m. opening.

15 Q. Did your father ever change those hours during the time he
16 worked there?

17 A. No.

18 Q. Did your father ever change those hours during the time
19 plaintiffs worked there?

20 A. No.

21 Q. So you changed the hour on Sunday recently?

22 A. Yes.

23 Q. Did you change the hours after plaintiffs left the
24 restaurant?

25 A. Yes.

H3h6pin11

Migliorini - direct

1 Q. So the hours that you just testified to were the same hours
2 that the restaurant was opened when plaintiffs worked there
3 during the entire period of their tenure?

4 A. Yes.

5 Q. Sir, when did your father pass away?

6 A. April 19th, 2014.

7 Q. Did the restaurant ever close early?

8 A. We were closed on Thanksgiving Day, Christmas Day, New
9 Year's Day, and the last two weeks leading up to Labor Day. It
10 was always surrounding opening the day after Labor Day. So it
11 wasn't always the last two weeks of August and it wasn't
12 always -- it was set around Labor Day itself. So to reopen the
13 Tuesday following Labor Day.

14 Q. Those are the days the restaurant was closed. Did it also
15 ever close early in the day?

16 A. Oh, yes.

17 Q. How frequently?

18 A. We closed early more often than not.

19 Q. Who would make the decision to close early?

20 A. When my dad was alive, he would. And after he passed, I
21 did.

22 Q. What went into that decision as to whether to close early
23 or not?

24 A. My dad's belief was that it was better to close early on a
25 day where there was no business in order to allow the employees

H3h6pin11

Migliorini - direct

1 to get home earlier so that when business was better or busier,
2 it would be easier for them to stay a little bit longer.

3 Q. When the restaurant closed earlier were the employees then
4 permitted to leave earlier during those days?

5 A. Yes, they were.

6 Q. When the restaurant was closed during the days you
7 indicated, no employee obviously -- excuse me -- did any
8 employee work at the restaurant?

9 A. No.

10 Q. Were employees still paid during the days that they were
11 either permitted to leave early or when the restaurant was
12 closed?

13 A. Yes.

14 Q. What were your responsibilities when you first started in
15 the restaurant when you started as a waiter?

16 A. Taking customers' orders, placing the orders, and serving
17 them their food, occasionally assisting in busing tables and
18 resetting the tables.

19 Q. Prior to the date your father died, did your
20 responsibilities ever change?

21 A. No.

22 Q. Were any of the plaintiffs named in this action already
23 working at the restaurant when you first started there?

24 A. Yes.

25 Q. Which ones?

H3h6pin11

Migliorini - direct

1 A. Angel Guayllasac.

2 Q. Do you know when Mr. Guayllasac started at the restaurant?

3 A. Sometime in 1993.

4 Q. Over the years did you work at the restaurant alongside the
5 employees in this action?

6 A. Yes, I did.

7 Q. Does that include Robinson Diaz?

8 A. No.

9 Q. Why is that?

10 A. My father had passed and I had assumed control of the
11 business at that time.

12 Q. Did you hire Mr. Diaz?

13 A. Yes, I did.

14 Q. Did your sister also work at the restaurant?

15 A. Yes, she did.

16 Q. What was her job at the restaurant?

17 A. She was a hostess, slash, waitress.

18 Q. When did she start working there?

19 A. Again, around the time that I started working there, late
20 1993, early 1994.

21 Q. Did her position ever change at the restaurant?

22 A. No.

23 Q. Does your sister still work at the restaurant?

24 A. Yes, she does.

25 Q. Does she hold the same position?

H3h6pin11

Migliorini - direct

1 A. Yes, she does.

2 Q. As the hostess and waitress, what was your sister
3 responsible for?

4 A. She was responsible for sitting customers, serving
5 customers, taking their orders, and also bringing food and
6 assisting in busing the tables and resetting the tables.

7 Q. Would you and your sister provide food orders to the
8 kitchen?

9 A. In so much as we would place customers -- we would take
10 their order for what they wanted to eat. And we would
11 initially handwrite the orders and we would place them into the
12 kitchen on -- I don't know the exact name for it, but it is a
13 rail that you can keep the ticket up on. And then we moved to
14 a POS system that was a touchscreen that would print the
15 tickets.

16 Q. Can you explain what POS is?

17 A. Point of sale.

18 Q. Would the point of sale system print out a ticket in the
19 kitchen when you entered the order?

20 A. Yes.

21 Q. The printer that you referenced earlier in one of the
22 photographs in the document before you, that was the printer
23 that printed out that ticket?

24 A. Yes.

25 Q. That printer was located in the kitchen?

H3h6pin11

Migliorini - direct

1 A. Yes.

2 Q. Where was it located specifically?

3 A. It was just to the right of what would be the portion of
4 the service window, which was the pasta, slash, fish station.
5 In all essence that is what was prepared in this station.

6 Sorry, just to the left. I am getting my left and
7 rights -- it was to left of that.

8 Q. Which of the plaintiffs worked at that station?

9 A. Angel Guayllasac.

10 Q. Do you know if Mr. Guayllasac would take those tickets?

11 A. Yes, he would.

12 Q. Do you know what he did with those tickets after he took
13 them?

14 A. He would review them and place them into the same holder
15 that we placed the written tickets and then proceed to either
16 tell Israel if any salads needed to be prepped as appetizers or
17 cold appetizers, which was his station area; or tell Eddie if
18 any hot appetizers needed to be prepared, because that was part
19 of his station. Then if they didn't need any of that, he would
20 tell Eddie if any meats needed to be prepared or anything in
21 the boiler because that was his station. Or he would have his
22 pasta and fish station and know what he needed to prepare for
23 the ticket.

24 Q. When you say "Eddie," that is Mr. Jaquez?

25 A. Yes.

H3h6pin11

Migliorini - direct

1 Q. What position did he hold at the restaurant?

2 A. He was a cook.

3 Q. When you mentioned Israel, that is Mr. Arizmendi?

4 A. Yes.

5 Q. What position did he hold at the restaurant?

6 A. He was the salad prep person and he washed the pots and
7 pans.

8 Q. Prior to your father's death and during the time that you
9 worked at the restaurant, who was the boss at the restaurant?

10 A. My dad.

11 Q. Who did the employees report to?

12 A. My dad.

13 Q. Did that include you and Maria?

14 A. Yes.

15 Q. Is that because you also are employees?

16 A. Yes.

17 Q. You mentioned that you had an uncle who worked at the
18 restaurant. This is your uncle Costanzo Migliorini?

19 A. Yes.

20 Q. Did your uncle also go by Mario Migliorini?

21 A. As far as I know, I always knew him as Costanzo.

22 Q. Did you ever call your uncle Mario?

23 A. Never.

24 Q. Did he work at the restaurant?

25 A. He did in the mornings doing prep work but never in the

H3h6pin11

Migliorini - direct

1 evenings.

2 Q. Did he ever stop working at the restaurant?

3 A. Yes, he did.

4 Q. When was that?

5 A. In 2005.

6 Q. Was he a shareholder in the restaurant?

7 A. Yes.

8 Q. Did he ever stop being a shareholder in the restaurant?

9 A. Yes, he did.

10 Q. When was that?

11 A. In 2005.

12 Q. After he stoped being a stockholder in the restaurant in
13 2005, did he do any work whatsoever for the restaurant in any
14 capacity whatsoever?

15 A. He was my dad's brother and business partner for almost 60
16 years. So he would come in to see my dad. They lived -- well,
17 they lived -- my uncle still lives in the same apartment, which
18 was two blocks away. They were together every day. They left
19 Italy together to Argentina and they came from Argentina to New
20 York and they always lived in the Village when they came to New
21 York. They were always together. So he would come and visit
22 my dad and stop in at the restaurant. And occasionally he --
23 my dad would ask him for some help and he would help him. They
24 were brothers.

25 Q. But did he hold any official title or official role or

H3h6pin11

Migliorini - direct

1 capacity with the restaurant?

2 A. No.

3 Q. Or with the company Frisoling?

4 A. No.

5 Q. Did he have any authority to act on behalf of the
6 restaurant in any capacity?

7 A. No.

8 Q. Just so it is clear going forward, all my questions from
9 this point are concerning the time period before your father
10 passed away in April 2014.

11 So prior to your father's death, did you or Maria have
12 the power to hire or fire employees?

13 A. No.

14 Q. Who set employee compensation at the restaurant?

15 A. My dad.

16 Q. What about employee work schedules, who set those?

17 A. My dad.

18 Q. Who set your work schedule and compensation?

19 A. My dad.

20 Q. Who set Maria's work schedule and compensation?

21 A. My dad.

22 Q. Did you have the power to discipline employees?

23 A. No.

24 Q. Who had that power?

25 A. My dad.

H3h6pin11

Migliorini - direct

1 Q. Did your sister have that power?

2 A. No.

3 Q. Do you know if your uncle ever had that power during the
4 time he worked at the restaurant?

5 A. I mean as far as being an owner, he would have had that
6 power, but he never yielded that power. He had no interest in
7 that.

8 Q. Who exercised that power?

9 A. My dad.

10 Q. Did he exercise that power at all times prior to his death?

11 A. Yes.

12 Q. Did you ever review the company's financials or company tax
13 returns?

14 A. No, I did not.

15 Q. Who did that?

16 A. My dad.

17 Q. Did you ever speak with the company's accountant about the
18 company's tax returns?

19 A. No.

20 THE COURT: What time period?

21 MR. KUBLANOVSKY: This is all before April 20th, 2014.

22 THE COURT: Those questions are applying to before
23 April 2014?

24 MR. KUBLANOVSKY: Correct.

25 THE COURT: When you are asking has he ever done it.

H3h6pin11

Migliorini - direct

1 MR. KUBLANOVSKY: That is why I prefaced all my
2 statements with the time period that all these question apply
3 to so it is clear.

4 BY MR. KUBLANOVSKY:

5 Q. Mr. Migliorini, does the restaurant lease its space?

6 A. Yes, it does.

7 Q. Again, prior to your father passing away, did you ever deal
8 with the landlord in negotiating or signing the lease for the
9 restaurant?

10 A. No.

11 Q. Who did?

12 A. My dad.

13 Q. Was there a company credit card or bank card during that
14 time?

15 A. I believe so, yes.

16 Q. Did you have it?

17 A. No.

18 Q. Did any other employee have one?

19 A. No.

20 Q. Who had one?

21 A. My dad.

22 Q. Did you ever review W-2s for any of the other employees?

23 A. No.

24 Q. On that first point, what is the first time you ever saw a
25 W-2 for any of the plaintiffs, for any employee in this action?

H3h6pin11

Migliorini - direct

1 A. It would have been 2015. The year 2015 when those W-2s
2 came in.

3 Q. If any of the employees at the restaurant had a question
4 about their jobs, who would they go to?

5 A. My dad.

6 Q. Did they ever go to you?

7 A. They would try to but I would tell them, I cannot help you
8 there. You have to go to my dad.

9 Q. If they had questions about their compensation, who would
10 they go to?

11 A. My dad.

12 Q. Did that also apply to you and Maria, would you go to your
13 dad?

14 A. Yes.

15 Q. Who paid the employees their wages?

16 A. My dad paid them. Occasionally we would hand them their
17 money if my dad was unavailable to pay them.

18 Q. So did your father ever ask you to hand the other employees
19 their wages?

20 A. Yes.

21 Q. Do you know if he ever asked Maria to hand the employees
22 their wages?

23 A. Yes, I believe so.

24 Q. Were you responsible for calculating any of those wages?

25 A. No.

H3h6pin11

Migliorini - direct

1 Q. Do you know if Maria was responsible for calculating any of
2 those wages?

3 A. No.

4 Q. Were you ever free to change the amount of the wages paid
5 to any of the employees?

6 A. No.

7 Q. Did you know how much the employees were being paid?

8 A. I did because my dad would prepare the payroll on Mondays
9 and he would do it in his apartment. And Mondays being our day
10 off -- I lived in the same building as him and I would go down
11 sometimes to his apartment. He was one floor below me. I
12 would see him counting money and putting different rubber bands
13 around different amounts of money. And I asked what that was
14 for and he told me it was for the payroll for the employees.
15 Occasionally he would ask me to recount a pile that he had and
16 I would see him put -- write a slip and put a name with a
17 rubber band. To that essence, yes, I did.

18 Q. You were not involved in the process of calculating the
19 wages or setting compensation?

20 A. No.

21 Q. How often was your father at the restaurant during the
22 week?

23 A. Seven days.

24 Q. When you say "seven days," you testified that the
25 restaurant was only open six days?

H3h6pin11

Migliorini - direct

1 A. You have to understand my father's attitude towards
2 especially Piccolo Angelo but business in general. Piccolo
3 Angelo -- he had two children. He had me and my sister.
4 Piccolo Angelo was his baby. He spent his days off there. He
5 went to check that nothing was wrong, everything was in its
6 proper place to start the week on Mondays. He liked being
7 there. He loved being there.

8 Q. What time would he usually be at the restaurant?

9 A. He would normally stay until closing until he got a little
10 bit older and then would leave around 9:00, 9:30 if I was there
11 in the evening. If I was not there in the evening, he would
12 still stay until closing.

13 Q. You may have mentioned this but just to clarify, what time
14 would you normally arrive at the restaurant?

15 A. Between 11:00 and 11:30 a.m. Sometimes earlier.

16 Q. Would he sometimes be the first to arrive at the
17 restaurant?

18 A. More often than not he was the first to arrive.

19 Q. Did anyone else ever arrive earlier than he did to the
20 restaurant?

21 A. Yes. Sometimes Angel Guayllasac would get there earlier
22 than him.

23 Q. Why was that the case?

24 A. My dad would want to be the first one there, but
25 occasionally he would have to schedule things regarding his

H3h6pin11

Migliorini - direct

1 personal life -- doctor's appointments, appointments with
2 various other things to do with the business -- and he would
3 tend to schedule them for the morning, a.m.; but these things
4 could tend to run over and he couldn't get there before Angel
5 would.

6 Q. Would it be Angel and not you or Maria to open the
7 restaurant?

8 A. I didn't come in in the mornings. That is not what he
9 wanted me to do.

10 Q. Do you know if Angel had a key to open the restaurant?

11 A. Yes, he did.

12 Q. Did any of the other employees have keys to open the
13 restaurant?

14 A. No, they did not.

15 Q. In the time that you worked at the restaurant and aside
16 from your father's illness and before he passed away, did your
17 father ever take any vacation from the restaurant and leave the
18 running of the restaurant to someone else?

19 A. Never.

20 Q. Generally speaking did your father ever take a day off from
21 the restaurant?

22 A. Outside of the days that we were closed, the holidays that
23 we were closed and the vacation that was scheduled for
24 everyone, no.

25 Q. Just to be clear your father would close the restaurant

H3h6pin11

Migliorini - direct

1 during those two weeks in the summer rather than someone else
2 be in charge of the restaurant?

3 A. Correct.

4 Q. Why would that be the case?

5 A. He didn't want to leave the restaurant to be run by anybody
6 other than himself.

7 Q. Did your father ever leave early on days that he worked at
8 the restaurant?

9 A. Yes. As I stated before, only on evenings when I was
10 there.

11 Q. So how did the employees know what to do or who to go to
12 when they had a problem?

13 A. They all had his home phone number. And later he got a
14 cell phone and they all had access to his cell phone number.
15 He would constantly check in when he went home early. If he
16 went home at 9:30, his first phone call would be at 10:30 and
17 proceed from there depending on how the business was. He
18 normally checked in between 10:00 and 10:30.

19 Q. Who would he call to check in?

20 A. He would call the restaurant line.

21 Q. Who would he speak with?

22 A. Occasionally it could be anybody that answered the phone.
23 Normally it was Fernando, myself or -- Fernando or myself.

24 Q. Did he speak with Angel?

25 A. He would ask for Angel.

H3h6pin11

Migliorini - direct

1 Q. Why would he ask for Angel?

2 A. He wanted to know what was going to -- needed to be done
3 the following day, prep work and orders.

4 Q. What if a customer saw a fly in her soup and was incensed
5 with the kitchen staff or wait staff, what would the staff do?

6 A. I mean, we were -- the wait staff were allowed to handle a
7 certain extent of situations, smaller. If somebody had to wait
8 for a table to -- my dad would always -- we would see how he
9 would handle situations when he was there and we understood to
10 handle it the same way he would handle. Give them a free house
11 wine or dessert. If it got to the point where that wasn't
12 satisfactory enough, we would contact him to ask him how should
13 we proceed with this.

14 Q. Do you know if any employees actually ever did contact him?

15 A. As far as I know we never had any issues of the type that
16 went to that extent that a free bottle of wine or dessert
17 wouldn't handle any situations in the dining room.

18 Q. What about questions concerning food preparation or any
19 issues in the kitchen, who was in charge of those questions
20 when your father was not there?

21 A. Angel.

22 Q. Why was that the case?

23 A. Because he was the kitchen manager.

24 Q. Who hired Mr. Guayllasac?

25 A. My dad.

H3h6pin11

Migliorini - direct

1 Q. How long did Mr. Guayllasac work at Piccolo Angolo?

2 A. He started before me in 1993.

3 Q. What was his position when he started at the restaurant to
4 the time before your father's death?

5 A. He was hired as a dishwasher and a couple of years later my
6 dad promoted him to the salad prep area and then after that I
7 was already at the restaurant and my dad kind of took him under
8 his wing and hired him to be the cook, slash, kitchen manager.
9 He trained him to do all the prep work in the afternoon with
10 him and how to prepare the foods that we served.

11 Q. Was his position different from the other employees?

12 A. Yes, it was.

13 Q. In what way?

14 A. He essentially was my dad's right-hand man.

15 Q. What do you mean by that?

16 A. He was there with my dad all afternoon. He learned all of
17 the recipes for my dad. My dad essentially taught him how to
18 cook. He assisted him in everything -- inventory, orders,
19 sometimes placing orders with vendors.

20 Q. So Mr. Guayllasac would place orders with the vendors
21 directly?

22 A. Yes.

23 Q. Would he tell your father what orders also needed to be
24 placed with vendors?

25 A. Occasionally, yes. He would because there were certain

H3h6pin11

Migliorini - direct

1 vendors that needed to be called or vendors that needed to be
2 called in the morning. Specifically the meat and the fish
3 needed to be called early in the morning and he didn't want to
4 burden him with having to get up at 6:00 a.m. to call them.
5 And he had a relationship with his vendors, specifically the
6 meat and fish. He knew the owners of the company.

7 Q. When you say "he," who are you referring to?

8 A. My dad. So he would take those orders from Angel. He had
9 direct lines to the owners. He had the direct lines to
10 whatever stores or businesses they had and later cell phone
11 numbers that he called them directly to place the orders. My
12 dad liked to handle it that way.

13 Q. Do you know which vendors Mr. Guayllasac dealt with?

14 A. Directly he dealt with DiCarlo Foods and he would sit down
15 with them on Tuesdays. It was a weekly order and he would sit
16 with the salesperson on Tuesday and place the order directly
17 with them.

18 Q. Do you know how much in terms of cost Mr. Guayllasac would
19 order on a weekly basis?

20 A. I didn't until my dad's passing when I started to see the
21 invoices and it was a substantial order. They are large orders
22 because it only comes once a week. It is most of the dry
23 goods, paper products, cleaning supplies, some food products,
24 imported food products and such. It was our largest order of
25 the week.

H3h6pin11

Migliorini - direct

1 Q. So you didn't know what he was ordering until after you
2 took charge of the restaurant?

3 A. Correct.

4 Q. So how much after he took charge of the restaurant on a
5 weekly basis was he ordering?

6 A. On a weekly basis our invoices with DiCarlo were anywhere
7 between two and \$3,000 a week.

8 Q. What other responsibilities did he have?

9 Just to be clear, I am talking about the period prior
10 to your father's death.

11 A. He was in charge of organizing the inventory in the
12 basement and managing the basement area, storage area of the
13 basement area.

14 Q. When you say in charge of inventory, what did that
15 encompass?

16 A. All of the food stored downstairs -- fish, meat,
17 vegetables, knowing what we had and what we were going it need.
18 My dad didn't like to place a lot of bulk orders when it came
19 to food in the way of fish and meat and vegetables. So it was
20 always ordered daily. He always needed to know what was --
21 what we had and what we needed. That was his job.

22 Q. Who would he relate all that information to?

23 A. He would normally just contact my dad directly and give him
24 the orders. Occasionally if he was in a hurry to leave, he
25 would write it on a list and give it to myself to bring to my

H3h6pin11

Migliorini - direct

1 dad. Because I lived in the same building, he would just ask
2 me to bring it to my dad. If he was in a hurry, sometimes he
3 would leave the restaurant but he would text me from his cell
4 phone with orders to give -- if I wasn't at the restaurant to
5 give it to my dad, I lived in the same building so I could
6 relay that information to him.

7 Q. Based on your testimony, Mr. Guayllasac did that in the
8 evenings before he left?

9 A. Yes. It was one of his duties.

10 Q. Did your father vest authority to Mr. Guayllasac to manage
11 the restaurant?

12 A. Yes, insofar as inventory and food products and the kitchen
13 itself during the evening.

14 Q. Do you know if your father vested this kind of authority in
15 any other employee?

16 A. No. He did not vest that.

17 Q. Not even in you or Maria?

18 A. No.

19 Q. Why not?

20 A. It's -- specifically to my sister, it was -- my dad being
21 an Italian gentleman that ran the business the women in the
22 family tended to stay separate from the business. It was just
23 the way he felt about it. He was willing to give her a job as
24 a waitress and hostess and have her working there in the
25 capacity; but he didn't feel she needed to have that

H3h6pin11

Migliorini - direct

1 responsibility. It wasn't her place to have that
2 responsibility.

3 In regards to me, I believe he didn't want me to go
4 down the life path that he took. He knew how hard the
5 restaurant business was and he wanted me to do something better
6 for myself.

7 Q. When you say that, do you know if your father ever
8 envisioned your taking over the restaurant?

9 A. We never had conversations about that. He never broached
10 that subject with me. It was not something we really
11 discussed.

12 Q. Did you feel that he wanted you to take over the restaurant
13 based on what you just testified to?

14 A. No. I really don't. I think he wanted me to do something
15 different, something on my own.

16 Q. Earlier you testified that you had worked at the restaurant
17 for three days. Did your schedule ever change at the
18 restaurant?

19 A. It did a little later on in that we would switch the days
20 that we worked -- the evenings that we worked.

21 Q. When you say "we," who do you mean?

22 A. Me and Maria. We worked alternate evenings and we switched
23 them just for -- for personal reasons. We were working -- she
24 was working Tuesday, Wednesday and Sunday evenings and I was
25 working Thursday, Friday, Saturday. It was difficult to -- it

H3h6pin11

Migliorini - direct

1 is hard to work those hours -- those evenings. And I just
2 started a new relationship and Friday, Saturdays -- it was a
3 long-distance relationship and I wanted to have a couple of
4 weekend evenings off. So we kind of worked around that and we
5 kind of didn't have it set in stone so much on the evenings.
6 We would be flexible.

7 Where I would say, Dad, I need Saturday night off.

8 Okay, come in Wednesday. Maria will come in Saturday
9 for you.

10 Q. So you sought permission from your father to change your
11 schedule?

12 A. Yes.

13 Q. Did you ever call in sick to the restaurant?

14 A. No. I lived in the same building as my dad so he knew when
15 I was ill.

16 Q. Do you know if any of the other employees ever called in
17 sick?

18 A. Yes, they did.

19 Q. Who would they call?

20 A. My dad.

21 Q. They would ask permission to not come to work that day?

22 A. Yes.

23 Q. Would they call anybody else and ask permission?

24 A. No.

25 Q. Who is Fernando Ortiz?

H3h6pin11

Migliorini - direct

1 A. Fernando Ortiz is our waiter.

2 Q. When did he start working at the restaurant?

3 A. I believe it was in January of 1993. I only know that
4 because he just celebrated a milestones anniversary of
5 20-something years.

6 Q. He still works for the restaurant?

7 A. Yes, he does.

8 Q. Prior to your father's death, did he have a key to the
9 restaurant?

10 A. No, he did not.

11 Q. Up until your father passed away, I believe you just
12 testified that he started -- Mr. Ortiz started in 1993. Prior
13 your father passing away, did he work at the restaurant almost
14 as long as you and Angel?

15 A. It was less. He was there before I was but after Angel.

16 Q. Do you know what Mr. Guayllasac's compensation was at the
17 restaurant prior to your father passing away?

18 A. I did.

19 Q. How do you know that?

20 A. Because I had seen my dad counting the money on Mondays and
21 he would occasionally ask me to just recount -- can you recount
22 that stack for me, and I would see him putting his name on that
23 rubber band stack of money.

24 Q. Aside from that did you have any other reason to know what
25 he was paid?

H3h6pin11

Migliorini - direct

1 A. No.

2 Q. Do you know if what he was paid was higher than any other
3 employee at the restaurant?

4 A. Yes, it was.

5 Q. What was he paid?

6 A. He was paid 1,050 a week.

7 Q. Was he paid more than you?

8 A. Yes, he was.

9 Q. Was he paid more than Maria?

10 A. Yes, he was.

11 Q. Why was he paid so much do you think?

12 A. Because he worked hard and my dad wanted to make sure he
13 was properly compensated for the hours and the overtime hours
14 he put in and he wanted to make sure he had extra added to that
15 because he was a hard worker.

16 Q. Why was he paid so much more than any of the other
17 employees if you know?

18 A. He was the kitchen manager and he was in charge of a lot of
19 things.

20 Q. When you took over the restaurant, did he continue to be
21 paid the same amount?

22 A. Yes, he did.

23 Q. Were you here for Mr. Guayllasac's testimony at this trial?

24 A. Yes, I was.

25 Q. Mr. Guayllasac testified that he was only paid \$420 a week;

H3h6pin11

Migliorini - direct

1 is this correct?

2 A. No, it is not.

3 Q. Do you know where he is getting that number from?

4 A. I believe from his W-2s and/or any pay stubs that he
5 received.

6 Q. You testified that that is not the amount he was paid?

7 A. Correct.

8 Q. So why was he paid more than the amounts reflected on his
9 W-2s?

10 A. Until my dad was alive, I didn't know what was on his W-2s
11 or his pay stubs. After my dad passed, I had hired a payroll
12 company to run the payroll for us as per our new accounting
13 firm asking me to do. In that process, they needed to fill out
14 W-4s for the payroll company. So as I had them fill out the
15 W-4s before I turned them into the payroll company, I informed
16 them, Angel specifically, this is what you are going to go on
17 the books for. I don't know what your pay will be after taxes
18 until I speak to the payroll company with your deductions. And
19 he told me, No, I don't go on the books for that, that is not
20 the deal I had with your dad. The deal I had with your dad was
21 to go on the book for \$400 a week.

22 Q. What did you want to put him on the books for?

23 A. For the \$1,050 a week.

24 Q. Why didn't you wind up putting him on the books for \$1,050
25 a week?

H3h6pin11

Migliorini - direct

1 A. Because he told me if I put him on books for \$1,050 a week,
2 he would quit.

3 Q. Did you have that conversation with any of the other
4 employees?

5 A. Yes. Eddie Jaquez.

6 Q. What was that conversation?

7 A. Same conversation with the W-4s, filling them out. I told
8 him your pay is 725 a week and I don't know what you will get
9 after taxes because I have to see. The payroll company had
10 told me that we were paying -- we were probably paying more in
11 payroll taxes than we should have been anyway. So the lady
12 told me you have to get the W-4s and we'll know exactly what
13 their take-home pay will be. I told them you will go on for
14 \$725. He told me, No, the deal I had with your dad was to go
15 on the books for \$400.

16 Q. Were you here during Mr. Jaquez's testimony?

17 A. Yes, I was.

18 Q. Do you recall his testifying that he had agreement with
19 your father, a verbal agreement as far as wages?

20 A. Yes, I do.

21 Q. Do you believe that was the agreement he was referring to
22 when he was testifying?

23 A. Yes, I do.

24 Q. Going back to Mr. Guayllasac, did you consider him to be
25 part of the restaurant's management team?

H3h6pin11

Migliorini - direct

1 A. Yes, I did.

2 Q. Again, just to be clear I am referencing the time prior to
3 your father passing away.

4 A. Right.

5 Q. So I will restate my question. In that context did you
6 consider Mr. Guayllasac to be part of the restaurant's
7 management team?

8 A. Yes.

9 Q. Did you consider yourself to be a part of the restaurant's
10 management team?

11 A. No.

12 Q. Did your father consider you a part of the restaurant's
13 management team?

14 A. No.

15 Q. Did your father consider your sister a part of the
16 restaurant's management team?

17 A. No.

18 Q. Did your father consider Mr. Guayllasac to be a part of the
19 restaurant's management team?

20 A. Yes.

21 Q. Did Mr. Guayllasac arrive at the restaurant each day prior
22 to the other employees?

23 A. Yes, he did.

24 Q. I believe you testified earlier that he arrived between
25 11:00 and 11:30?

H3h6pin11

Migliorini - direct

1 A. No. When my dad would arrive, he would arrive 11:30 to
2 12:00 p.m.

3 Q. What time would he usually leave?

4 A. He would leave after he -- he cleaned his station and
5 checked what he needed downstairs. He would clean his station
6 area, cover any food, and go downstairs and change and come
7 back up with his list or talk to my dad about the orders, and
8 then he would leave. He was free to leave.

9 Q. Do you remember what time he usually left?

10 A. It varied because it was after the kitchen closed.

11 Q. So on each night -- and you can take us through each
12 night -- when did the kitchen close during the days the
13 restaurant was open?

14 A. The kitchen was -- our hours were from 5:00 to 11:00, but
15 we normally closed the kitchen after the last customer placed
16 their order. We didn't stay open 0if the last customer was at
17 and 10:00 and they had their food by 10:30, we weren't -- my
18 dad especially didn't want to wait for a table of two to come
19 in to order two pastas for minimal effort and minimal revenue
20 to annoy the employees. He rather avoid that and save that for
21 a night where we had customers that were -- it was going to be
22 a little bit longer for them. He would term them, Close the
23 kitchen. It's not worth it. Let's just let everybody go home.

24 Q. So you said the restaurant was open for 5:00 to 11:00.
25 That was during the week?

H3h6pin11

Migliorini - direct

1 A. Yes.

2 Q. What about the weekends? Do you know when Mr. Guayllasac
3 would normally leave on the weekends?

4 A. The weekends were obviously our busiest day -- Friday and
5 Saturday. We never sat anyone after -- our last reservation
6 was 10:30 and we never sat anyone after 11:00. So normally the
7 kitchen would be done by 11:30. And after his cleanup and
8 changing, and specifically on Fridays, there were still some
9 orders to be placed so he needed to do that on Fridays.
10 Saturdays there were no orders to be placed. No one delivered
11 on Sundays. When he was done cleaning his station, he was free
12 to go home.

13 Q. If I could go back quickly to the document that I gave you
14 of the photographs, can you turn to the last page of that
15 document, please. This document appears to reflect the
16 business hours for the restaurant.

17 When were these hours put in place?

18 A. I don't remember. Honestly it's -- I mean, it was before
19 they -- the employees left, the plaintiffs left, but I don't
20 know the exact date that that was put up.

21 Q. Actually while we're here so we don't have to come back,
22 can you go to the second to last page?

23 A. Yes.

24 Q. This page appears to show a closed sign hanging from the
25 door.

H3h6pin11

Migliorini - direct

1 A. Correct.

2 Q. Who would be in charge of turning that sign to show whether
3 the restaurant was open or closed?

4 A. It could be anyone on the wait staff. My dad if he was
5 there would say, Turn the sign; we're going to close. Even if
6 there were customers that were still in the dining room,
7 sometimes he would say, Turn the sign; we're going to close.
8 He didn't want people trying to come in even if there were
9 people still eating. When he wanted to close the restaurant,
10 that was how he did it and how we continue to do it and just
11 not to have anybody come in after we decided to close.

12 Q. When the restaurant opened for business, was that sign
13 turned to open?

14 A. Yes.

15 Q. When would that take place?

16 A. 5:00.

17 Q. Ever any earlier than 5:00?

18 A. Only on Sundays at 4:00.

19 Q. Ever any earlier on Sundays than 4:00?

20 A. No, never.

21 Q. Mr. Guayllasac ever leave any of the other employees when
22 you finished your shift?

23 A. I didn't hear you.

24 Q. Did Mr. Guayllasac ever leave work with any of the other
25 employees when he finished his shift?

H3h6pin11

Migliorini - direct

1 A. Not that I know of. He lived in Queens and the employees
2 that would have finished around the same that he finished did
3 not live in Queens. So they took different trains. He would
4 leave before them. Sometimes there would be people still
5 sitting and they would exit the same time, but they didn't
6 leave together. There were times when they would come up to
7 the dining room. They may want to sit and have a beer or glass
8 of wine and they didn't necessarily leave right away. He may
9 have exited with somebody, but he wouldn't leave with them per
10 se.

11 Q. So the employees were free to stay after they finished work
12 at the restaurant?

13 A. Yes.

14 Q. Why?

15 A. Because we didn't have a -- we didn't have a policy where
16 you were not allowed to have beers or glass of wine or soda.
17 Sometimes they would prepare something to eat and they thought
18 they would take it home or they wanted to sit down and eat and
19 they would sit down and eat. They would want to change before
20 they ate so they felt more comfortable not in their work
21 clothes while they were eating. They would eat the meal that
22 they prepared and sometimes there were sporting events on that
23 they wanted to see the end of on our TV. We welcomed them
24 staying.

25 Q. Your father was okay with that?

H3h6pin11

Migliorini - direct

1 A. Yeah.

2 Q. Did you also stay with them?

3 A. Yeah.

4 Q. Did the employees get along?

5 A. Yeah.

6 Q. Would you describe the employees that worked at the
7 restaurant as a tight group?

8 A. Yeah. We were -- we were friends. We did a couple group
9 outings, Yankee games together, me, Fernando, Eddie, Angel,
10 Luis, Israel. I don't believe Robinson was part of that
11 because he wasn't hired at that point, but we would go to
12 Yankee games on Mondays together. We very -- it was more like
13 family than it was employees. We were constantly -- before
14 their shifts started when the weather was nice they were
15 constantly outside. My dad had a tendency after he was done
16 prepping to sit outside on his lawn chair and everyone in the
17 neighborhood knew him and the employees would come out and joke
18 around with him and joke around. Always joking around with
19 each other. There was a lot of just -- we had a good
20 relationship.

21 Q. They were never told to finish their shifts and leave at
22 the end of each night?

23 A. No. They were told the kitchen is closed and they could
24 close up and either go home or come back up and talk to myself,
25 Fernando, my dad if he was still there.

H3h6pin11

Migliorini - direct

1 Q. When did the kitchen open each day to start serving
2 customers?

3 A. 5:00. Except for Sundays at 4:00.

4 Q. Approximately how long before the restaurant closed did the
5 kitchen close?

6 A. I mean, I would say normally the restaurant closing
7 depended on -- like, locking the door closed? Is that what --

8 Q. Yes.

9 A. It could be anywhere from half an hour, 45 minutes
10 depending on who was still there. If something was -- again,
11 we had a TV -- on, the World series was on, we were all sitting
12 there watching it especially if the Yankees happened to be
13 involved. Most of us are Yankees fans and still are. No one
14 was in a hurry and if they wanted to watch the end of the game
15 and my dad would say okay and we would sit and watch the game.
16 He would sometimes get involved especially if it was the
17 Yankees because it was New York. So it could vary when they
18 could leave and closing.

19 Q. When the kitchen closed, did it stop taking food orders?

20 A. Yes.

21 Q. After the kitchen closed, what was Mr. Guayllasac's
22 responsibilities?

23 A. He needed to cover the food in his section, which was the
24 fish and pasta. There were two small tall boy refrigerators.
25 Scrub his stove, which was a four-burner stove. Scrub the

H3h6pin11

Migliorini - direct

1 countertop of his two tall boy refrigerators and go downstairs.
2 I don't know what he was -- what he did so much downstairs
3 because that was pretty much unsupervised, but I assume it was
4 checking the inventory one last time because he would come up
5 with orders and then change and be free to go home.

6 Q. How long would it normally take him to fulfill those
7 responsibilities in the kitchen?

8 A. In the kitchen itself, 15 minutes. In the basement that
9 was contingent on how quickly he changed. He was unsupervised
10 down there. So sometimes there were other guys down there
11 changing. They could get into a conversation. So I didn't --
12 you know, I was attending to other things in the dining room so
13 when they came back up is when he came back up.

14 Q. Who is Mr. Pineda?

15 A. Luis was our busboy.

16 Q. When did Mr. Pineda start working at the restaurant?

17 A. I believe it was in -- it was in 2000. It was in 2000
18 because it was before 9-11 that I remember.

19 Q. Who hired Mr. Pineda?

20 A. My dad.

21 Q. What responsibilities did he have as a busboy?

22 A. He needed to set up the bar -- service bar area. It means
23 opening the house wine and putting -- we use carafes because we
24 have liter and a half bottles and we put them into liter
25 bottles. Prepping beers, make sure we had beers on ice,

H3h6pin11

Migliorini - direct

1 bringing up a bucket of ice to start the shift. Folding
2 napkins, which Fernando, myself, and my sister would assist him
3 in folding the napkins and bringing up some table clothes to
4 have for the shift. Generally making sure the dining room was
5 set up to start running.

6 Q. Do you know what Mr. Pineda's compensation was at the
7 restaurant?

8 A. He was paid \$75 a day plus 15 percent of the daily tips.

9 Q. How do you know how much he was paid?

10 A. Because at the end of the night either myself or Maria
11 would pull the \$75 out of the cash to pay him by my dad's
12 instructions. Then as part of the splitting of the tips with
13 Fernando, we were instructed by my dad to give him 15 percent
14 of the total gratuities for the night.

15 Q. You, Maria and Fernando were the other wait staff?

16 A. Yes.

17 Q. How were you paid?

18 A. Myself, I was paid by tips. My share of the tips.

19 Q. Do you know how Maria was paid?

20 A. The same.

21 Q. As tipped employees?

22 A. Yes.

23 Q. Did Mr. Pineda ever complain to you about the pay that he
24 received?

25 A. No.

H3h6pin11

Migliorini - direct

1 Q. Do you know if he complained to your sister about the pay
2 he received?

3 A. No.

4 Q. Do you know if he ever complained to your father about the
5 pay that he received?

6 A. No.

7 Q. After your father passed away, did he continue to be paid
8 the same amount?

9 A. Yes.

10 Q. Did he ever complain to you about what he was paid?

11 A. No.

12 Q. Did he ever complain to you that anyone was stealing tips?

13 A. No.

14 Q. Did he ever complain to you that your sister was stealing
15 tips from him?

16 A. No.

17 Q. Did he ever complain to you about his hours or schedule?

18 A. No.

19 Q. What about during the time your father was alive, did he
20 ever complain about his schedule to you?

21 A. No.

22 Q. To your sister?

23 A. No.

24 Q. To your father?

25 A. Not complain. Just ask for a change.

H3h6pin11

Migliorini - direct

1 Q. Can you describe that?

2 A. I only know that he asked instead of coming in at 3:00 -- I
3 don't know when that was -- to come in at 4:00. My father
4 said, Fine.

5 Q. Do you know if Mr. Pineda ever received tips directly from
6 any of the restaurant's customers?

7 A. Yes, he did.

8 Q. Did those tips ever go into the tip box for the tip pool?

9 A. No, they didn't. He wasn't required to.

10 Q. So he was allowed to keep those tips?

11 A. Yes.

12 Q. And your father was okay with that?

13 A. Yeah. To an extent he would -- there was a certain
14 customer, a regular, still is a regular, he tended to tip
15 everyone in the restaurant, all of the employees. Outside of
16 myself, Fernando and Maria, he tipped everyone in cash
17 including the back, the kitchen staff and the dishwasher.
18 Outside of my dad, myself and Maria and Fernando. Because he
19 tipped -- he was living a tip knowing that was for Luis. My
20 dad encouraged him to tip Luis that amount that he was giving
21 to the kitchen as well. He would tell him, Take care of Luis
22 too.

23 Q. Were there only cash tips at the restaurant?

24 A. No. There was very rarely cash tips at the restaurant.

25 Q. The box that stored the cash for the tip pool, was that the

H3h6pin11

Migliorini - direct

1 entirety of the tip pool?

2 A. No, it was not.

3 Q. What percentage of the tip pool do you think that was on
4 any given night?

5 A. On a given night, 20 percent.

6 Q. Where did all the other tips come from?

7 A. Credit card sales.

8 Q. How were those distributed to the tipped employees?

9 A. At the end of the night the batch needed to be sent on the
10 credit card machine and the receipt would be printed with the
11 total sales and the -- well, let me go back.

12 At the end of the night the tips needed to be entered
13 because customers were allowed to write them in and do their
14 mathematics. So those needed to be entered manually into the
15 machine and then the batch needed to be sent. Then a receipt
16 would be printed with the sales amounts and the tip amount and
17 then total. So tip amounts would be withdrawn from the cash
18 register in cash and then taken wherever we did the splitting.
19 Normally it was right by the cash register because it was the
20 easiest area to do that. Put the cash in the tip box and put
21 it together with the credit card tips that were now in the cash
22 box and distribute them that way.

23 Q. Did Mr. Pineda remain at the restaurant after the
24 restaurant closed and while the tips were being calculated?

25 A. He normally would. Some nights he would be in a hurry and

H3h6pin11

Migliorini - direct

1 need to do something either in the morning or wanted to get
2 home early -- earlier. So he wouldn't remain because we had to
3 wait for the last customer to physically -- even though they
4 were done eating, table is cleaned, they may not necessarily
5 have paid the tab, which means the check could have been at the
6 table but they didn't put the tab in and we would encourage
7 them to kind of -- can we move this along. Do you mind paying,
8 we want to close out the receipts. So sometimes he wouldn't be
9 inclined to wait for the credit card receipts to be run. So if
10 that was the case, his \$75 would be paid to him for his nightly
11 wages and then whatever his percentage of tips were given to
12 Fernando to give to him the next day.

13 Q. To deliver it to him the next day?

14 A. Yes. To deliver it to him the next day.

15 THE COURT: We'll take a 10-minute break.

16 (Recess)

17 THE COURT: Please be seated.

18 You may continue.

19 MR. KUBLANOVSKY: Thank you, your Honor.

20 BY MR. KUBLANOVSKY:

21 Q. Mr. Migliorini, were you here during Mr. Pineda's
22 testimony?

23 A. Yes, I was.

24 Q. Mr. Pineda testified that he was paid \$400 per week. Does
25 that sound right to you?

H3h6pin11

Migliorini - direct

1 A. No. He was paid \$75 daily. So six days a week by \$75
2 daily plus the 15 percent of the tip pool.

3 Q. The \$75 daily six days a week is \$450?

4 A. Correct.

5 Q. Plus 15 percent tips?

6 A. Yes.

7 Q. I apologize if you said this earlier, but what time did
8 Mr. Pineda usually start working each day at the restaurant?

9 A. 4:00 p.m.

10 Q. What time did he usually leave?

11 A. Normally after the last table was set and cleared.

12 Depending on what time that table was served and cleared -- not
13 set and cleared, served and cleared. Normally between 10:30
14 and 11:00 Tuesday through Thursday and 11:00 to 12:00 on Friday
15 and Saturday and 10:00 to 10:30 on Sunday.

16 Q. How long would it normally take Mr. Pineda to clean up each
17 night?

18 A. 10 minutes.

19 Q. Did he typically leave with any of the other plaintiffs?

20 A. Not that I know of.

21 Q. Did you oversee Mr. Pineda?

22 A. No, I did not.

23 Q. Did your sister oversee Mr. Pin?

24 A. No, she did not.

25 THE COURT: Are you talking about a certain period of

H3h6pin11

Migliorini - direct

1 time?

2 MR. KUBLANOVSKY: I am, sir.

3 Q. My questions relate to when your father was still alive.

4 A. Okay.

5 Q. So in that context did you ever see Mr. Pineda?

6 A. No, I did not.

7 Q. Did your sister oversee Mr. Pineda?

8 A. No, she did not.

9 Q. Who did Mr. Pineda report to?

10 A. My dad.

11 Q. By the way can you please turn to Exhibit 4 in the
12 plaintiffs' book. I believe it is in the binder.

13 Sir, prior to this action had you ever seen these
14 documents before?

15 A. No, I have not.

16 Q. Now, Mr. Pineda testified that you gave him these
17 documents; is that true?

18 A. No, it's not.

19 Q. Mr. Pineda also testified that you signed the second page
20 of this document on behalf of your uncle; is that true?

21 A. No, it is not.

22 Q. Do you know what these documents are used for?

23 A. I have no idea.

24 Q. Do you believe these are official documents from the
25 company Frisoling?

H3h6pin11

Migliorini - direct

1 A. No, I do not.

2 Q. I would like to show you another document.

3 MR. KUBLANOVSKY: May I approach, your Honor?

4 THE COURT: Yes.

5 Q. Sir, are you familiar with your uncle's signature?

6 A. Yes, I am.

7 Q. Have you ever seen this document before?

8 A. Yes, I have.

9 Q. Can you turn to the second page of this document.

10 Do you recognize your uncle's signature on this page?

11 MR. ELLIS: Objection, your Honor. The witness is not
12 a handwriting expert.

13 THE COURT: He doesn't have to be a handwriting expert
14 to lay a foundation. He can be familiar with other people's
15 signature or competent to testify as to whether or not that is
16 in fact their signature that they are familiar with. I am
17 going to overrule that objection.

18 Q. Sir, as of September 28th, 2013, was your uncle affiliated
19 with the restaurant or Frisoling in any way?

20 A. No, he was not.

21 Q. I believe you may have mentioned this before, but did you
22 ever refer to your uncle as Mario Migliorini?

23 A. No, I did not.

24 Q. Do you know if your uncle ever signed his name as Mario
25 Migliorini?

H3h6pin11

Migliorini - direct

1 A. No, he did not.

2 Q. What was your uncle's legal name?

3 A. Costanzo Migliorini.

4 Q. Would you ever sign on behalf of your uncle using Mario
5 Migliorini?

6 A. No, I did not.

7 Q. Would you turn to the first page of Plaintiff's Tab 4. It
8 is a letter signed by your father Renato Migliorini.

9 Do you know where Mr. Pineda would have gotten this
10 letter from?

11 A. No, I do not.

12 Q. Do you believe that these two letters are authentic?

13 A. No, I do not.

14 MR. ELLIS: Calls for speculation.

15 THE COURT: Overruled.

16 You can answer.

17 Q. Why not?

18 A. Because that is not my dad's signature and that is not my
19 uncle's signature.

20 MR. KUBLANOVSKY: Your Honor, at this point I would
21 like to renew any previous objection as to the authenticity of
22 these documents. We don't believe that they were
23 authenticated. The witness testified as a representative of
24 the business that these are not business records.

25 THE COURT: No. I am going to overrule that. I will

H3h6pin11

Migliorini - direct

1 admit those into evidence at this time. The witness identified
2 them and said they are authentic. This witness said they are
3 not. So that is a factual dispute that I have to resolve. It
4 doesn't go to its admissibility. It goes to my determination
5 as to which one in my review and my evaluation of the testimony
6 and credibility of the witnesses as to what weight I will give
7 this. I will admit them into evidence.

8 Is that 4?

9 MR. ELLIS: Plaintiffs' Exhibit 4.

10 (Plaintiffs' Exhibit 4 received in evidence)

11 BY MR. KUBLANOVSKY:

12 Q. Sir, when did Mr. Jaquez start working at the restaurant?

13 A. I believe it was in 2011.

14 Q. Do you know who hired Mr. Jaquez?

15 A. My dad.

16 Q. What was his position at the restaurant?

17 A. He was a cook.

18 Q. Did he start off as a cook?

19 A. Yes, he did.

20 Q. What responsibilities did he have?

21 A. He was responsible for cooking the meats, manning the
22 Salamander or broiler grill, preparing hot appetizers, and
23 side -- vegetable side dishes, hot vegetable side dishes.

24 Q. Would anyone tell him what to prepare in the kitchen?

25 A. Yes.

H3h6pin11

Migliorini - direct

1 Q. Who?

2 A. Angel.

3 Q. Do you know what Mr. Jaquez's compensation was at the
4 restaurant?

5 A. He was paid \$725 a week.

6 Q. Why do you know that?

7 A. Again, in the course of my dad prepping the payroll on
8 Mondays, I would occasionally recount piles for him to make
9 sure -- he would ask me to double-check his work and I would
10 see Eddie's name on a slip of paper with the bundle of money.

11 THE COURT: Didn't we go through this earlier?

12 MR. KUBLANOVSKY: I am not going to spend a lot of
13 time --

14 THE COURT: I have that written in my notes.

15 Q. Was Mr. Jaquez paid weekly?

16 A. Yes, he was.

17 Q. What time did Mr. Jaquez start working every day at the
18 restaurant?

19 A. 3:00 p.m.

20 Q. What time did he usually leave?

21 A. Normally after we closed the kitchen. It took him about
22 15, 20 minutes to close his station and change and then he was
23 allowed to go home. So that could be anywhere between 10:30
24 and 11:30 on the weekdays and 11:00 and 12:00 on the weekends
25 and 10:00 to 10:30 on Sundays.

H3h6pin11

Migliorini - direct

1 Q. If you take a look at the documents that I gave you at the
2 beginning of the day, the photographs of the restaurant --

3 A. Yes.

4 Q. -- can you show us where the stations were for
5 Mr. Guayllasac, Mr. Jaquez, and Mr. Arizmendi referencing this
6 document?

7 A. The best picture would probably be on the third -- fourth
8 page.

9 Q. So the record is clear this is a picture of the kitchen and
10 a table with the stack of dishes in the center?

11 A. Correct.

12 Q. So where would the three of them work in relation to this
13 picture?

14 A. Eddie would be to the left of the stack of the plates.
15 Angel's station was two refrigerators to the right of the stack
16 of the plates. And then Israel's station is not easily seen
17 here, but you can see the beginnings of it to the right of the
18 slicing machine with the dish towels on top.

19 Q. Is that the salad prep area?

20 A. Yes. There is a better pictures of it later on.

21 Q. How long would it take Mr. Arizmendi to clean up his
22 station at the end of each night?

23 A. Cleaning his station was very quick. He only had to cover
24 the salad -- salads, salad ingredients, and food items in the
25 bottom part of the fridge. That small table is less than the

H3h6pin11

Migliorini - direct

1 front of this witness stand. It is a very small prep area. He
2 had to scrub that down with a Brillo pad. He then needed to
3 mop the kitchen floor after that.

4 Cleaning his station took him 10 minutes and mopping
5 the floor took him another 15 minutes.

6 Q. So 25 minutes to half an hour?

7 A. Yes.

8 Q. I believe you said it took Mr. Jaquez 15 to 20 minutes to
9 clean his station. Did he have any other responsibilities?

10 A. No, he did not.

11 Q. So after Mr. Jaquez finished cleaning his station, what
12 would he do next?

13 A. He would go downstairs to change.

14 Q. What would he do after that?

15 A. Prior to Robinson being hired, he would either go home or
16 sit down upstairs like I said earlier watching if there was a
17 game on. If he wanted to have a beer, wanted to eat something,
18 he would do that. Or he was free to go home after.

19 Q. I am sorry.

20 A. After Robinson was hired, he would wait for Robinson to go
21 home together because they lived on the same block and they
22 took the same train home.

23 Q. What about Mr. Arizmendi, what would he do after he
24 finished cleaning up his station and mopping the floor?

25 A. He went downstairs to change.

H3h6pin11

Migliorini - direct

1 Q. After that?

2 A. He was free to go home.

3 Q. Prior to your father passing away, did you oversee

4 Mr. Jaquez?

5 A. No, I did not.

6 Q. Did you oversee Mr. Arizmendi?

7 A. No, I did not.

8 Q. Did Mr. Guayllasac ever call in sick?

9 A. Yes, he did.

10 Q. When he called in sick, who would help prepare the meals?

11 A. I would.

12 Q. Before your father passed away?

13 A. I would.

14 Q. Would your father ever help prepare the meals?

15 A. In the way of prep work, my father was always doing the
16 prep work at the restaurant. In regards to his job at night as
17 a cook and kitchen manager, I would do that when he called in
18 sick.

19 Q. You would help cook the meals?

20 A. Yes. The orders from the customers, yes.

21 Q. Would the other employees report to you or to your father?

22 The other kitchen employees, would they report to you or to
23 your father during that time?

24 A. To my dad.

25 Q. When did Mr. Arizmendi start working at the restaurant?

H3h6pin11

Migliorini - direct

1 A. I believe he started working for us in either 2009 or the
2 early part of the 2010.

3 Q. How long total did he work for the restaurant?

4 A. The latter part of -- the latter part of 2010 to 2011 and
5 then he was back working for us at 2012.

6 Q. Who hired Mr. Arizmendi during both of those times?

7 A. My dad.

8 Q. Do you know how much Mr. Arizmendi was paid?

9 A. He was paid \$500 a week.

10 Q. How do you know that?

11 A. The same as before, counting.

12 Q. Was he paid weekly?

13 A. Yes, he was.

14 Q. What time did Mr. Arizmendi start working at the
15 restaurant?

16 A. 5:00 p.m. Except on Sunday, 4:00 p.m.

17 Q. Did he ever arrive early?

18 A. No.

19 Q. Why are you so sure?

20 A. Because he had another job that did not allow him to arrive
21 before 5:00 p.m.

22 Q. Did your father know he had another job?

23 A. Yes, he did.

24 Q. Was your father okay with that?

25 A. He was so long as he was ready to work at 5:00 p.m.

H3h6pin11

Migliorini - direct

1 Q. Did he ever arrive after 5:00 p.m.?

2 A. No. He was pretty good with being there. Occasionally
3 depending on the trains and whatnot, but he was pretty good
4 about being there by 5:00 to be ready to work.

5 Q. After your father passed away, did he maintain the same
6 hours?

7 A. Yes, he did.

8 Q. Did all of the plaintiffs maintain the same hours after
9 your father passed away?

10 A. Yes, they did.

11 Q. Were all the plaintiffs paid the same amounts, with the
12 exception of Mr. Diaz who we'll get to in a second? But all
13 the other plaintiffs were they paid the same wages after your
14 father passed away?

15 A. Yes, they were.

16 Q. What time did Mr. Arizmendi usually leave the restaurant?

17 A. During the week between 10:45 and 11:15, 11:30. On the
18 weekends between 12:00 and 12:30. On Sunday -- Sundays no
19 later than 10:30.

20 Q. When did Mr. Diaz start working at the restaurant?

21 A. In September of 2014.

22 Q. Who hired Mr. Diaz?

23 A. I did.

24 Q. This was after your father passed away?

25 A. Yes, it was.

H3h6pin11

Migliorini - direct

1 Q. How long did Mr. Diaz work at Piccolo Angolo?

2 A. Less than a year.

3 Q. Do you know how much less than a year?

4 A. September -- five months.

5 Q. Is Mr. Diaz related to Mr. Jaquez?

6 A. Yes, he is. It is his cousin.

7 Q. Did Mr. Jaquez recommend to you that you hire his cousin?

8 A. Yes, he did.

9 Q. Why did you decide to hire him?

10 A. Because I knew Eddie to be a good worker, hard worker, and
11 I trusted his recommendation to bring in somebody who was
12 equally as good a worker and hard as a worker.

13 Q. Was Mr. Diaz as good as a worker as he was told to be?

14 A. Yes, he was.

15 Q. Prior to any of the plaintiffs' leaving the restaurant
16 February 7, 2015, did you have a problem with any of their
17 work?

18 A. No, I did not.

19 Q. What was Mr. Diaz's position again at the restaurant?

20 A. He was hired to sweep and mop the kitchen floor before the
21 start of service. And then he was -- twice a week he was to
22 vacuum underneath-- where you couldn't really get a broom or
23 mop to sweep. He was hired to vacuum underneath storage areas
24 and refrigeration. He did that twice a week. He was the
25 dishwasher during the evening.

H3h6pin11

Migliorini - direct

1 Q. Do you know what Mr. Diaz's compensation was at the
2 restaurant?

3 A. He was paid \$550 a week.

4 Q. Did you set Mr. Diaz's compensation?

5 A. Yes, I did.

6 Q. How was Mr. Diaz paid his wages?

7 A. Cash.

8 Q. Was he paid weekly?

9 A. Yes, he was.

10 Q. What time did Mr. Diaz start working usually each day at
11 the restaurant?

12 A. We had hired him to come in at 2:30, but if he -- he would
13 occasionally come in at 3:00. So long as he could get the
14 floors swept and mopped so that they could be dry before the
15 start of service and other than the days he was required to
16 vacuum. It could depend on whether he had to vacuum, he would
17 come in closer to 2:30. If he didn't had to vacuum that day,
18 and he only did that twice a week, he would come in closer to
19 3:00 p.m.

20 Q. When would he usually leave?

21 A. Tuesday through Thursday he would normally leave around
22 11:15 to 11:45. Friday and Saturday between 11:45 and 12:15
23 And Sunday between 10:00 and 10:30.

24 Q. How long would it normally take him to clean up each night
25 after the kitchen closed?

H3h6pin11

Migliorini - direct

1 A. We -- as the dishwasher -- we lease our dishwashing
2 machine. So we have a certain number of runs per month that
3 we're allowed. So we don't -- my dad's policy and then mine
4 after was not to run it empty or a half filled load. So he
5 needed to run the last full load and then he was allowed to
6 leave any unwashed, be it glasses if they were not full not to
7 run them but to leave them, which meant he didn't have to wait
8 for the final tables to finish if he didn't have a full load to
9 run. If it was two dessert plates and coffee cups, he didn't
10 have to wait for that to be cleared to bring to the back. He
11 was allowed to start cleaning his area and clean the machine
12 and clean the top of the dishwashing machine and just changing
13 the water in the machine which was two buttons, and then
14 mopping his area and the small area between the kitchen and the
15 bathrooms.

16 Q. So did he ever --

17 A. And also taking out the trash and recycling, which the
18 other guys in the kitchen also helped him with because he would
19 bundle them and on their way out if they were before him, they
20 could grab them and help him do that.

21 Q. Did he ever have to stay and wait for diners or customers
22 in the dining room to finish washing dishes?

23 A. No. He just had to run the last full load.

24 Q. So what would he do next after finishing his
25 responsibilities for the night?

H3h6pin11

Migliorini - direct

1 A. Would go downstairs to change.

2 Q. After that?

3 A. He would either go home. When I say "go home," they would
4 come in to the dining room to say good night. Everybody would
5 come in to say good night to whoever was in the dining room.

6 He could either go home or if he came into the dining room and
7 wanted to stay, he could stay and have a beer, a glass of wine.

8 Q. When the employees stayed, this was all voluntarily?

9 A. Yes.

10 Q. They didn't have to stay?

11 A. No.

12 Q. It was their choice?

13 A. Yes.

14 Q. On any given night how, long would it take to clean up the
15 restaurant before it closed?

16 A. Including the dining room -- again, this is why we didn't
17 sweep and mop at the end of the night in the dining room, we
18 did that prior to service because we didn't want to keep
19 anybody there later than they had to be. I would say half an
20 hour total for everything.

21 Q. Does it make sense to you that any of the plaintiffs would
22 have stayed at the restaurant one to two hours after closing
23 cleaning up the restaurant?

24 A. Not unless they were watching a baseball game or basketball
25 game or a sporting event like that and they were enjoying them.

H3h6pin11

Migliorini - direct

1 Q. Would customers ever stay late at the restaurant?

2 A. They would try to, but we would encourage them to move to
3 another location. We all wanted to go home.

4 Q. After your father passed away, did you keep in place your
5 father's policies in terms of running the restaurant, how he
6 ran the restaurant?

7 A. Yes, I did.

8 Q. When did you first figure out how your father calculated
9 each employee's compensation, meaning how they were paid and in
10 what manner?

11 A. I had an idea from counting and bundling on Mondays. Then
12 when he became ill -- that Monday he was taken to the hospital
13 and --

14 Q. Let me put bookends around the dates.

15 Do you recall the dates?

16 A. I don't recall the exact date. I know it was three weeks
17 prior to his passing. That Monday he told me exactly how much
18 everybody needed to be paid on Tuesday.

19 Q. Before your father became so ill that he could not speak
20 when he was in the hospital, would he still tell you how much
21 everyone needed to be paid and what they needed to do at the
22 restaurant?

23 A. Regarding pay it was only that one week. It was that one
24 time after that I knew. I had actually written it down because
25 I wanted to make sure I had it right. Following that he -- the

H3h6pin11

Migliorini - direct

1 week after his first surgery, he was still in contact with the
2 employees of the restaurant and his recovery -- he was still
3 able to speak. He had his cell phone in his hospital room and
4 he would constantly be checking in the restaurant with Angel.
5 He would ask for the phone to be passed around at the time that
6 he called.

7 Q. With respect to the wages that were paid to each employee
8 by your father, can you describe to us the difference between
9 the amounts reflected on their W-2s and the checks they were
10 issued -- not the checks, the amounts that they were actually
11 paid in cash? Do you know why there was a difference?

12 A. My understanding was that that is what they wanted to be
13 put on the books for and that is what they had arranged with my
14 father and he was trying to help them out and he wanted to
15 make -- their actual pay he wanted to make sure they were
16 compensated properly and compensated well for the work that
17 they did.

18 Q. Can you please describe to me what happened on the evening
19 of February 7th, 2015?

20 A. It goes more to than just that evening. It goes to even
21 the month and the two months prior after New Years. January --
22 after the holidays January, February tend to be our two slowest
23 months of the year. In particular that week prior Superbowl
24 Sunday was -- I wasn't there that evening. I tended to not be
25 at the restaurant on Sundays when my dad was alive. After my

H3h6pin11

Migliorini - direct

1 dad passed, I wasn't at the restaurant on Sundays, but I would
2 go at closing to get all of the -- to gather all of the
3 evenings receipts, any cash that was left over, and to see
4 if -- make sure everything was okay, anything I needed to do
5 for Monday and Tuesday in the way of orders.

6 That Superbowl Sunday I was not at the restaurant. I
7 was at a friend's house and my sister called me at 7:00 and
8 said to me, Peter, we've made four customers and it is 7:00.
9 There is no one on the streets. What should I do? And I said,
10 There is no sense. Just close the kitchen. So she closed the
11 kitchen. They were pretty much cleaned up and the restaurant
12 was locked at 8:00 p.m.

13 The following part of that week, that Wednesday, there
14 was -- a not as -- this past snowstorm was much worse than this
15 so-called blizzard we had that Wednesday. It called for a huge
16 blizzard that Wednesday, and the business was terrible again.
17 We made maybe 15 customers. I proceeded to close the kitchen
18 again early. I believe it was around 9:00 p.m. They were gone
19 by 9:30. They were home -- not home, but they were out of the
20 restaurant by 9:30. I was home by 9:45 because I live 15
21 minutes away.

22 So that Saturday we had a nice set of reservations
23 and -- a nice amount of reservations for that evening and we
24 had some walk-in traffic as well and we were busy. It was a
25 little bit of a hectic Saturday, but after a calm -- a very

H3h6pin11

Migliorini - direct

1 quiet week, it was something that I needed for the business and
2 we needed the revenue.

3 I had a 10:00 p.m. reservation, which was actually our
4 last reservation, but between our peak hours we were full solid
5 the whole night. Our 10:00 p.m. reservation had to wait for
6 their table. There was nothing available for them when they
7 came at 10:00 p.m. They had to wait until 10:30. They were
8 seated at 10:30. Fernando took their order. There was no
9 appetizers. It was I believe two pastas and two kitchen parms.
10 So he placed the order.

11 As he was placing the order, I noticed that Eddie had
12 already started to -- he was already starting to clean his
13 stovetop. And I said to him, Eddie, what you are doing? We
14 have people we have to feed, and he just kind of brushed me
15 off. I wasn't thinking anything of it. The food didn't --
16 wasn't being prepared. So I went back to the kitchen. It took
17 a lot longer than it should.

18 I went back to the kitchen and Eddie wasn't preparing
19 the food. I said Eddie, Why aren't you preparing the food?
20 These people have to eat. If you want to go home, you have to
21 prepare the food. This way I can close the kitchen. These are
22 the last customers I have for the evening. We have no more
23 reservations. We have been busy. I want to close the kitchen,
24 but I have to feed these people.

25 He said to me, I don't work past 10:30. I am done

H3h6pin11

Migliorini - direct

1 cooking for the night. I already started cleaning my station.
2 I want to go home. I said, Eddie, no, really the kitchen
3 doesn't close until 11:30 on Saturdays and you know we feed
4 people up to 11:00 if we're busy. He said, I don't care what
5 you say. We went back and forth and it got heated.

6 Finally, he prepared the dishes in a very haphazard
7 way. He plated them very poorly. Once the food came out, it
8 was loud because we were arguing. I said, Fine, now you can
9 leave. I went back out to the dining room. He came out into
10 the dining room, walked past me. I was standing by the bar
11 talking to a table that was by the service bar. I was talking
12 to them, regular customers, that come all the time.

13 So I was talking to them. He didn't say anything to
14 me as he walked by me. He stopped almost near the front door,
15 turned around and preceded to give me the middle finger and
16 curse me out loudly in front of a pretty -- pretty busy dining
17 room. I said to him at that point, I didn't fire you earlier,
18 but now you are fired. He went downstairs. The guys proceeded
19 to go downstairs. I didn't think anything of it. When they
20 were downstairs, they were unsupervised.

21 There was nobody in the dining room at that point but
22 myself and a couple of straggling customers and the two to
23 regulars that were kind of in shock of what happened. They
24 were like, What was that all about.

25 And so then the plaintiffs all came up and I was still

H3h6pin11

Migliorini - direct

1 standing in the same area and they surrounded me in a
2 semicircle and all demanded their pay for the week. I said,
3 Well, you don't get paid until -- individually, aside from
4 Luis, you don't get paid until Tuesday. So why would -- they
5 said, We're quitting. I said, Well, you still don't get paid
6 until Tuesday. I don't know what, why you are quitting for.
7 And they said, Well, the way you treated Eddie wasn't right and
8 we don't like the way you treated him tonight so we're quitting.

9 Eddie was with them in that group. I said to Eddie, I
10 said I don't feel comfortable with you right now. I fired you.
11 Now, can you please leave the premises. And he refused to.
12 And I said, If you don't leave the premises, Eddie, I am going
13 to call the police because I feel threatened by you, and he
14 left.

15 And I explained to the other people about their pay.
16 I said to Luis, Luis, I cannot I give you your tips because I
17 have not finished entering the credit cards for the day. You
18 can come back for your tips tomorrow as would be the norm. As
19 to the rest of you, your pay will be available on Tuesday like
20 a regular pay day. If you show up for your shift tomorrow,
21 Sunday at your regular time, you still have a job. I didn't
22 fire any of you except for Eddie.

23 I said to Robinson in particular, this especially goes
24 for you, you being his cousin, if you still want to work here,
25 you can come show up tomorrow for your shift and you will have

H3h6pin11

Migliorini - direct

1 a job.

2 Q. Did they say anything else to you before heading out?

3 A. The only one that did was Angel. He gave me the keys to
4 the front door. And I looked at him and I tried to get him to
5 look me in the eyes and I said, Really, after all of these
6 years, Angel, for everything to be part of our family this is
7 what you are going to do to us? And he wouldn't look me in the
8 eyes and he just walked out.

9 Q. Were you able to open the next day?

10 A. Yes. It was a strange day to say the least. Fernando
11 had -- I had the help of a lot of friends. I called everybody
12 I could. My girlfriend came in to help wait tables. Some
13 friends of mine came into help wait tables. Another friend of
14 mine that is in the restaurant business came in. He was doing
15 the dishes and the dishwashing machine. Fernando came in to
16 help me clean the pots and pans in the kitchen. And I ran the
17 kitchen by myself.

18 Q. All three stations?

19 A. Yeah. Needless to say we only took reservations, no
20 walk-ins. It was very limited business but we opened.

21 Q. Did you eventually hire new employees?

22 A. Yes, I did.

23 Q. Same number?

24 A. Yes. Well, except for less one because I have assumed
25 Angel's position.

H3h6pin11

Migliorini - direct

1 Q. Why do you believe the plaintiffs quit that evening?

2 A. I have been thinking about that a lot over the course of
3 two years now and I really think it is because they did not see
4 me as their boss. They saw me as their peer. And after my dad
5 died, I had to take the mantle of boss. And I am going to be
6 honest, I don't have my dad's personality. I -- I am -- my dad
7 is a lot -- was a lot more easy going than me. A lot of stuff
8 just kind of rolled off his back and, Okay, just let it go. It
9 is not that big of a deal.

10 As I took over the mantle of ownership, I saw the
11 financial situations we were in and my dad's mantra was pay the
12 rent, pay your employees. Those are the two most important
13 things when it comes to the restaurant. Make sure those are
14 done. You want happy employees. You have happy employees, you
15 happy customers.

16 When I got in and I started to see where we were
17 financially, I realized we needed to make some tweaks to the
18 way the business was run, in so much as I started to check more
19 on the inventory and see what Angel was ordering, have more of
20 a hands-on grasp of what was going on in the basement with the
21 inventory. Because I noticed a lot of excess ordering and I
22 was trying to lower the bills so we could make more money. I
23 don't think -- just a lot of waste in the kitchen.

24 I would call -- I would call them out on that, you
25 know. Whereas my dad would let them handle their station

H3h6pin11

Migliorini - direct

1 according to how they felt. Making mistakes, I would call them
2 out on that more. Guys, you have to be more careful. He
3 ordered a chicken parm and you made a veal parm. We cannot
4 sell that now. That is waste. That is costing us money. I
5 would call them out more on that. My dad would go, You eat it.
6 Don't worry. It still cost us money, but he had a way of doing
7 it a little bit differently than me.

8 I don't think they appreciated that. I don't think
9 they liked it. I think they hated it.

10 Q. You said even when you assumed the mantle of ownership
11 after your father died, you still had a good relationship with
12 the employees?

13 A. I thought we did.

14 Q. You mentioned your father became ill roughly three to four
15 weeks before he passed away?

16 A. Yes.

17 Q. Can you tell us what happened during that time?

18 A. The Friday leading up to his surgery, that Monday, he was
19 at the restaurant. He was in the back. He was complaining
20 about a stomach ache. He was talking to everybody. Everyone
21 was, Renato, you should go home. You should go to the doctor.
22 You shouldn't have this pain. He had had the pain for a number
23 of days. Everybody was telling him, Renato, you should go to
24 doctor, trying to convince him to go to the doctor.

25 He went home. They convinced him to go home a lot

H3h6pin11

Migliorini - direct

1 earlier than he ever did. He went home. He didn't come in
2 Saturday. He still wasn't feeling well. He didn't come in
3 Sunday. Monday we had finally convinced him to go to the
4 hospital. At that point I was in my apartment.

5 My mother called me. He couldn't get his pants on and
6 he was having a hard time walking. It is a five -- six-story
7 walkup building. They live on the fourth floor. I had to help
8 him down the stairs and get him and my mother into a cab and
9 they went to Beth Israel emergency room. I went back upstairs
10 to call -- to get the number for his physician who wasn't at
11 Beth Israel at the time to call him to get him to go over
12 there. I called my sister to tell her to come into the city.
13 She went straight to Beth Israel.

14 I proceeded to take care of all the other stuff
15 regarding the phone calls my mother asked me to make. I went
16 to Beth Israel. They had to perform emergency surgery on his
17 bowel. He had an obstruction. They performed the emergency
18 surgery on Monday -- Monday evening. He went into recovery.
19 We were in the waiting area until he came out of recovery. The
20 surgery had gone well.

21 That Tuesday he was in a room in a -- he was in the
22 urgent care area for Tuesday, but he was not on any
23 respirators. He was breathing on his own. The first
24 question he asked me was, Who is at the restaurant. I said,
25 I am going here after I get here. He said, Okay, make sure you

H3h6pin11

Migliorini - direct

1 get all orders from Angel or have him call me. He didn't have
2 the cell phone. Get all the orders from Angel and make sure
3 they are in place for Wednesday. Okay, Dad, don't worry. I
4 have got it. Taken care. Go, go, I am fine.

5 He continued to get better. He moved into a regular
6 room Wednesday I believe. From Wednesday to Saturday he was in
7 a regular room. Had access to the cell phone, access to a
8 phone, constantly checking into the restaurant, talking to
9 Angel about everything regarding orders and preparation.

10 That Monday when he was supposed to be released, they
11 did an X ray, one final X ray, to check to make sure everything
12 was okay and they saw some bleeding in his large intestine and
13 they had to do another emergency surgery. After that surgery
14 when he came out, he was on a respirator. He was not able to
15 speak. He took a downturn towards the course of two weeks.
16 After that surgery, we were actually -- the surgeon and his
17 doctor told us that we needed to prepare for the worse.

18 So we started making arrangements with the funeral
19 parlor. Miraculous he came out of it, not completely, but he
20 did survive for two weeks. Me and my sister and my mom spent
21 most days at the hospital at his bedside. And I would go to
22 the restaurant around 2:30 3:00 because I knew it was his wish.
23 If he woke up, he would be, Why are you here? Why aren't you
24 at the restaurant. And also to give Angel a hand because he
25 was missing my dad because it was a lot of work for him.

H3h6pin11

Migliorini - direct

1 I would stay at the restaurant until closing and most
2 nights I would go from the restaurant and closing back to the
3 hospital, sit at his bedside until about 5:00 or 6:00 in the
4 morning. Go home and sleep for a couple hours. Go back to
5 hospital. Go back to the restaurant. I was back and forth all
6 over the place. And then that Saturday we were there at the
7 hospital on our normal schedule and I was going to go back to
8 the hospital and his doctor told me, Don't. Don't go back to
9 the hospital. I was, like, he is not going to make it through
10 the night. At 5:00 -- 5:05 p.m. that evening he passed away
11 and we were all around him when he did.

12 After that we went to -- we went back to the
13 restaurant as a whole, as a family with our other family
14 members there. We went back to the restaurant and we told
15 our -- told his employees, our employees, what happened.
16 Basically we all just stood around and hugged each other and we
17 were all crying, employees included. I proceeded to explain to
18 anybody waiting for a table what happened, anybody that was
19 eating, closed. That was it.

20 Q. When did the restaurant reopen?

21 A. Monday and Tuesday were his wake and Wednesday was his
22 funeral mass and burial and we reopened on that Friday.

23 Q. You say you assumed the mantle of ownership after your
24 father passed away. Why was it you?

25 A. I -- it was just -- I just assumed that was the line that

H3h6pin11

Migliorini - cross

1 it went down. You know, when he was in the hospital, he never
2 said to my hospital, What are you doing here? Why don't you go
3 to the restaurant? He said it to me so I just assumed that is
4 how it had to go.

5 Q. By the way was either Piccolo Angolo or your father for
6 that matter, had they ever been defendants in a wage per hour
7 suit before this case?

8 A. No.

9 Q. How di you react when you found out that plaintiffs had
10 sued you, your uncle, sister, your father, and the restaurant?

11 A. I mean, I have been -- since the night of them all leaving,
12 I have been just -- I am still to -- this moment I am trying to
13 process everything. And the fact of that letter, I just didn't
14 understand. I didn't know what they wanted from us.

15 MR. KUBLANOVSKY: No further questions.

16 THE COURT: Cross-examination.

17 MR. ELLIS: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MR. ELLIS:

20 Q. Can turn to Plaintiff's Exhibit 12, please.

21 Are you familiar with that document?

22 A. Yes.

23 Q. Did you sign this document?

24 A. Yes, I did.

25 Q. Is it accurate?

H3h6pin11

Migliorini - cross

1 A. It is not accurate and I was not authorized to give that
2 letter to Angel.

3 Q. So why did you?

4 A. Because he had approached me and said that he had asked my
5 dad for a letter regarding his wages and my dad refused him and
6 he said he really needed it to get his children on Medicaid or
7 Medicare. I am sorry but I get those confused all the time.

8 He sounded very desperate about it and I wanted to
9 help him. So I copied -- copied a letter he had as an example
10 for me on top of our letterhead that we just standard
11 letterhead that we had available and I gave it to him. When my
12 dad found out, I had gotten in trouble for that.

13 THE COURT: Sorry. It is my fault because I pulled
14 some of your exhibits. Would you show this to Mr. Ellis. I
15 want to make sure I am looking at the same thing as you. The
16 letter dated July 12th.

17 MR. ELLIS: Yes.

18 THE COURT: Thank you.

19 Go ahead, Mr. Ellis.

20 MR. ELLIS: Thank you, your Honor.

21 Q. So was this letter in fact written then or around
22 July 11th, 2012?

23 A. It may have been before. I think he needed it dated for
24 the date he was going to the -- told me he needed it dated a
25 specific date when he was going to the Medicaid office.

H3h6pin11

Migliorini - cross

1 Q. In that time frame generally, July 2012, you really in fact
2 were the vice president of Frisoling, Inc.; is that correct?

3 A. I was listed as a shareholder and as vice president, yes.

4 Q. That was since when?

5 A. I believe it was in 2005 when my uncle relinquished his
6 shares. My dad -- the way they had spread his shares out were
7 25 percent to myself and 25 percent to my sister, I believe.

8 Q. Did anything change in terms of your duties or
9 responsibilities when the shares shifted ownership?

10 A. No.

11 Q. Do you know if your sister took on any added
12 responsibilities in terms of corporate -- strike that.

13 Did your sister take on any added corporate
14 responsibilities when she became an owner in the business?

15 A. Not that I know of.

16 Q. I would like to turn your attention to Plaintiff's
17 Exhibit 15 that is not in the notebook. It is your affidavit.

18 A. Okay.

19 Q. That's it.

20 September 4th, 2016.

21 A. I don't see a date on there.

22 Q. I would like to turn your attention to page 2.

23 THE COURT: Where are you? In your exhibit book?

24 MR. ELLIS: It is not in the exhibit book. It is the
25 affidavit of Peter Migliorini.

H3h6pin11

Migliorini - cross

1 THE COURT: Yes.

2 Q. Page 2, paragraph six. This is discussing you and the
3 responsibilities that you and your sister had after you became
4 shareholders.

5 The second sentence, Likewise, we did not exercise any
6 control over Frisoling or the restaurant prior to our father's
7 death --

8 THE COURT: Slow down and start over.

9 Where are you reading from?

10 MR. ELLIS: Page 2, paragraph six, your Honor. Second
11 sentence.

12 THE COURT: Read it slowly.

13 Q. Likewise, we did not -- "we" here is a reference to Peter
14 and Maria Migliorini -- did not exercise any control over
15 Frisoling or the restaurant prior to our father's death as he
16 solely controlled the operations and management of Frisoling
17 and the restaurant.

18 Is that accurate?

19 A. Yes, it is.

20 MR. KUBLANOVSKY: Your Honor, I would like to mark
21 into evidence as plaintiff's Exhibit 16 the affidavit of Maria
22 Migliorini, dated September 8, 2016.

23 THE COURT: Okay.

24 MR. KUBLANOVSKY: Your Honor, I am going to object to
25 the extent that the witness is going to be asked about the

H3h6pin11

Migliorini - cross

1 statements of somebody else.

2 THE COURT: Depends on what is asked.

3 MR. KUBLANOVSKY: Very well.

4 MR. ELLIS: Does your Honor have a copy?

5 THE COURT: I do not.

6 MR. ELLIS: Sorry, your Honor.

7 THE COURT: Should I have a copy in the binder?

8 MR. ELLIS: No. It is not in the binder, your Honor.

9 THE COURT: This is exhibit?

10 MR. ELLIS: 16.

11 Sorry, your Honor. I cannot find my copy.

12 THE COURT: Take it back.

13 What is your question?

14 MR. ELLIS: My question was about one specific
15 paragraph.

16 BY MR. ELLIS:

17 Q. My question is about paragraph six. I will read it into
18 the record. Again, this is the affidavit of Maria Migliorini
19 Cintron to dated September 8, 2016.

20 Paragraph six: At all times since I worked at the
21 restaurant, both prior to my father's death in late April 2014
22 and to the current day, I have not had any managerial or
23 operational control of either Frisoling or the restaurant. I
24 did not and do not make any personnel decisions, establish work
25 schedules, handle payroll, or handle the restaurant's finances.

H3h6pin11

Migliorini - cross

1 Is that statement accurate to the best of your
2 knowledge?

3 A. Yes, it is.

4 THE COURT: Are you offering this into evidence?

5 MR. ELLIS: Yes, your Honor.

6 THE COURT: Which exhibit number is it?

7 MR. ELLIS: Exhibit 16, your Honor.

8 THE COURT: Do you have any objection?

9 MR. KUBLANOVSKY: No objection.

10 THE COURT: It is admitted.

11 (Plaintiffs' Exhibit 16 received in evidence)

12 BY MR. ELLIS:

13 Q. Now I would like to offer into evidence Plaintiff's
14 Exhibit 17. These are a series of sales tax payments made by
15 Frisoling, Inc. to New York State with each quarterly filing.
16 And these date back as far as 2010. With each quarter filing
17 there is a check and payment for the sales taxes. If you look
18 through at the end, you can see that each of those checks is
19 signed by your sister.

20 Were you aware that she was signing checks on behalf
21 of the corporation in 2010 or 2011 or 2012 prior to your
22 father's death?

23 A. No, I wasn't.

24 Q. Are you aware of what your sister's title was at that time,
25 her corporate title?

H3h6pin11

Migliorini - cross

1 A. I believe it was secretary.

2 Q. Do you know how payroll -- excuse me, sales taxes were
3 handled at that time?

4 A. I would assume that our accountant in New Jersey handled
5 those.

6 Q. Does it surprise you to find out that your sister was
7 signing checks on behalf of the corporation in 2010?

8 A. No, it doesn't. Because our accountants is located in New
9 Jersey and was not able to come into New York to get said
10 checks to file the taxes. She lived two towns over from my
11 sister and my sister and myself did have access to sign checks.

12 Q. You had access to sign checks; is that correct?

13 A. We did access to the account and we had to be put on as
14 signers because Chase Bank had changed the policy on being able
15 to go to the bank and get -- make any transactions and that
16 includes getting change for the business. If you weren't on
17 the account, you could not get change.

18 Q. So you had to be on the account?

19 A. So you had to be on the account to get change. You didn't
20 have to have a bank card, but you had to be on the account to
21 get change. So my dad would often send either one of the two
22 of us to get change for the evening's business. I do know
23 myself and my sister were allowed to sign checks for that
24 reason.

25 Q. Is that a separate account from the tax account? If you

H3h6pin11

Migliorini - cross

1 see on the checks it says underneath Frisoling, Inc., tax
2 account. I am curious were you a signatory to that account or
3 are you referencing a different account aside from the tax
4 account?

5 A. They probably are all linked as a business. They were --
6 all accounts are linked. As of this date they are still
7 linked.

8 MR. ELLIS: Your Honor, I move that these documents be
9 admitted.

10 THE COURT: Any objection?

11 MR. KUBLANOVSKY: No objection.

12 THE COURT: They will be admitted into evidence as 17,
13 did you say?

14 MR. ELLIS: Yes, your Honor.

15 THE COURT: Exhibit 17 is admitted.

16 (Plaintiffs' Exhibit 17 received in evidence)

17 BY MR. ELLIS:

18 Q. I would like to go back and discuss tips with you really
19 quickly.

20 You testified earlier that you were not paid a salary
21 or wages but that you just made tips; is that accurate?

22 A. Yes, it is.

23 Q. On an average day, how much did you personally make in
24 tips?

25 A. On average, I would say anywhere between -- again, it

H3h6pin11

Migliorini - cross

1 varied from day-to-day and season to season. It is hard to
2 give a really accurate average because it depends on the
3 business and what the customers are spending. Most tips are
4 not a solid number that you can just say -- some people tip
5 15 percent, some customers tip up to 30 percent. You are
6 putting a very wide range. It a very big range.

7 Q. If you would like to break it down seasonally, we can do
8 that?

9 A. Okay. I mean, the slower months obviously from January
10 to -- it is not just seasonally. It is also daily. Business
11 is better on the weekends than it is during the week. It is a
12 daily situation. Weather can be a factor in that as well. It
13 is not -- you are dealing in a customer service industry that
14 tips are not a based on anything. It is based on the
15 customer's experience. You are trying to put a hard number on
16 something that cannot really have a hard number to it. We're
17 open 50 weeks a year, six days a week. Every day is different.
18 Every day is different.

19 Q. Let's say a weekend in the winter, a Saturday in the
20 winter?

21 A. Winter meaning?

22 Q. January.

23 A. \$200.

24 THE COURT: Sorry. I am just not following. \$200 is
25 an answer to what question?

H3h6pin11

Migliorini - cross

1 MR. ELLIS: How much Mr. Migliorini himself made in
2 tips.

3 THE COURT: Is that correct?

4 THE WITNESS: Yes.

5 Q. Let's take Saturdays again. A Saturday in June, is that a
6 busy time?

7 A. Busier than in January.

8 Q. What is the busiest month?

9 A. Probably around the holidays. November to December is our
10 best months. Again, June, July, us being a neighborhood
11 restaurant, a lot of people go out of town. We don't base our
12 business on tourism. We are a local restaurant. Our business
13 is different than, say, a business in Times Square or a
14 business that is down by the 9-11 Memorial. We are a
15 neighborhood restaurant.

16 Q. Let's take a Saturday in June. What would you make on
17 average on a Saturday in June?

18 A. 250, 275.

19 Q. How much would you make on a Saturday in December in tips?

20 A. 300.

21 Q. Who exactly shared in the tip pool?

22 A. Three nights a week myself, Fernando, and Luis. And the
23 other three nights a week maria, Fernando and Luis.

24 Q. Is that the same both before and after your father died?

25 A. Yes.

H3h6pin11

Migliorini - cross

1 Q. Did your schedule change after your father died?

2 A. Only in that I was coming earlier. I was coming in at
3 around noon, 12:30 in afternoon.

4 Q. How many days per week?

5 A. Six. Sorry. Five. I didn't come in around noon on
6 Sundays because -- no one came in around noon on Sundays
7 because there are no deliveries to be received. Those are the
8 only reasons you would be in early is because of deliveries. I
9 still continue that practice.

10 Q. You testified earlier that Sunday was your day off; is that
11 correct?

12 A. Correct.

13 Q. I would like to turn your attention back to your affidavit,
14 Plaintiff's Exhibit 15, page 3, paragraph eight. The last
15 sentence reads, Since my father's death in late April, 2014, I
16 now work approximately 10 to 11 hours per day, six days per
17 week at the restaurant.

18 That is the second to last sentence in the paragraph.
19 In any event, is that accurate that you worked 10 to 11 hours a
20 day, six days a week?

21 A. No. Because as I said before Sundays we didn't come in at
22 12:00. There was no reason to come in at 12:00. Sundays I was
23 allowed to -- I allowed myself to go home after the opening of
24 the restaurant and come back at the close.

25 Q. I would like to turn your attention in the notebook to

H3h6pin11

Migliorini - cross

1 Plaintiff's Exhibit 5. These are pay stubs for Eddie Jaquez?

2 A. Okay.

3 Q. The number here on the first sheet -- this is a pay stub
4 dated September 30th, 2014. It says here under earnings that
5 Mr. Jaquez was paid a salary of \$400 then there are taxes
6 deducted and then the net for Mr. Jaquez is supposedly 315 --
7 \$315.50.

8 Is this document accurate?

9 A. It's not.

10 Q. In what way is it not accurate?

11 A. He was paid \$725 a week.

12 Q. Were taxes deducted?

13 A. There were taxes deducted in his name, but his pay was not
14 deducted of taxes.

15 Q. The taxes that were deducted were based on a salary of \$400
16 rather than a salary of \$725; is that correct?

17 A. Yes, it is.

18 Q. I would like to turn to Exhibit 6. This is an employee
19 earnings record from September 16, 2014 to December 31st, 2014
20 for plaintiff Eddie Jaquez.

21 Do you recognize this document?

22 A. Yeah. I have seen it before, yeah.

23 Q. This is just a summation of all of the pay stubs that were
24 issued to Mr. Jaquez during that period, September to
25 December 2014?

H3h6pin11

Migliorini - cross

1 A. No. They are not because the first two quarters were not
2 the responsibility of the payroll company.

3 Q. Right. I think this just refers to quarter four, September
4 to December 2014?

5 A. Well, no. Partial of quarter three as well because that is
6 when I hired the payroll company.

7 Q. Okay. Is this document accurate insofar as it reports to
8 show these pay stubs that were issued to Mr. Jaquez?

9 A. It is not.

10 Q. Is it an authentic document?

11 A. It is.

12 MR. ELLIS: I move it be admitted into evidence, your
13 Honor.

14 THE COURT: Any objection?

15 MR. KUBLANOVSKY: No objection.

16 THE COURT: It will be admitted into evidence.

17 (Plaintiffs' Exhibit 6 received in evidence)

18 BY MR. ELLIS:

19 Q. Let's look at Exhibit 8. Same set of questions. Were
20 these pay stubs issued to Mr. Robinson Ortega?

21 A. Yes.

22 Q. Was Mr. Ortega paid a salary of \$400?

23 A. No, he was not.

24 Q. Were these taxes that are listed here on this first one,
25 this first pay stub dated 9-30-2014, were these taxes actually

H3h6pin11

Migliorini - cross

1 deducted from Mr. Ortega's paid?

2 A. They were paid for in his name, but they were not deducted
3 from his pay.

4 Q. I would like to turn to Exhibit 9. Again, this is an
5 employee earnings record for plaintiff Robinson Ortega Diaz.
6 Covers checks dated September 16th, 2014 to December 31st,
7 2014.

8 Is this an authentic document, sir?

9 A. It is.

10 Q. I move it be admitted into evidence, your Honor?

11 THE COURT: Any objection?

12 MR. KUBLANOVSKY: No objection.

13 THE COURT: Admitted.

14 (Plaintiffs' Exhibit 9 received in evidence)

15 BY MR. ELLIS:

16 Q. Exhibit 13, please. This is an earning record for Angel
17 Guayllasac covering checks dated September 16, 2014 to
18 December 31st 2014.

19 Is this an authentic document?

20 A. It is.

21 MR. ELLIS: I move it be admitted into evidence, your
22 Honor.

23 THE COURT: Any objection?

24 MR. KUBLANOVSKY: No objection.

25 THE COURT: It will an admitted.

H3h6pin11

Migliorini - cross

(Plaintiffs' Exhibit 13 received in evidence)

BY MR. ELLIS:

Q. I would like to turn your attention to the posters that you referenced earlier in the photographs.

THE COURT: Did you mean to offer these into evidence?

MR. KUBLANOVSKY: I did. I was going to wait. If it is okay to do it now, I would offer them into evidence.

MR. ELLIS: No objection. My previous objection is withdrawn.

THE COURT: I will admit all of these photos.

(Defendants' Exhibit E received in evidence)

BY MR. ELLIS:

Q. I believe the sixth and seventh pages of this document are photographs of posters that are posted in your restaurant; is that correct?

A. Yes.

Q. Did you --

A. Were posted.

Q. Say it again.

A. Were posted.

Q. Were posted.

They are not posted anymore?

A. Not these particular posters. They are outdated.

Q. Do you know who posted these posters?

A. I did.

H3h6pin11

Migliorini - cross

1 Q. About when did you do that?

2 A. I believe it was -- I am having a hard time seeing. I
3 believe it was in December or January. December or January of
4 2014 or 2015. I am not 100 percent sure. It was when I got --
5 this came in an envelope from the payroll company. It was
6 after I hired them.

7 Q. Did you read the posters when you posted them?

8 A. I glanced at them. I didn't read them. They are rather
9 large posters.

10 Q. Okay.

11 A. Half of it is in Spanish, which I don't speak so...

12 Q. You testified earlier it was the restaurant policy to
13 handwrite tickets for orders and eventually the restaurant
14 installed a point of sale system. When was the point of sale
15 system installed?

16 A. I don't remember.

17 Q. Do you recall how many years it has been there?

18 A. Honestly, I don't because it was a cold sale with my dad.
19 Somebody came in and sold him on putting in the point of sale
20 system and they set it up entirely for him. So I don't really
21 recall when it was. It was probably around 2011, 2012. I
22 wasn't there for the meeting so I don't really recall.

23 Q. To the best of your knowledge it happened around 2011 or
24 2012?

25 A. To the best of my knowledge, yes.

H3h6pin11

Migliorini - cross

1 Q. Did Angel have the power to hire people?

2 A. That power he did not have. Only one person had that
3 power, my dad, while he was alive.

4 Q. Right.

5 Did Angel have the power to set people's pay?

6 A. No, did he not.

7 Q. Did he have the power to set people's schedules?

8 A. No, he did not. He could request to my dad if he felt
9 someone needed to be there a little bit earlier or a little bit
10 longer. He would express that to my dad especially when it
11 came to the kitchen. If he felt they weren't meeting up the
12 standards that he needed in the kitchen, he was allowed to go
13 to my dad about that.

14 Q. You testified earlier that you on occasion would help your
15 dad by actually physically delivering wages to employees and
16 that your sister would do this, too; is that correct?

17 A. Yes.

18 Q. You also testified that your dad used to leave around 9:00,
19 9:30 when you were there but only when you were there; is that
20 right?

21 A. Yes.

22 Q. What if you weren't there, what would he do?

23 A. He would stay until the door was locked.

24 Q. You said that on these days when he would leave, would he
25 call at around 10:30 when he got home to check in?

H3h6pin11

Migliorini - cross

1 A. Not when he initially got home. Sometimes he would take
2 food home with him. He would take a cab home so he would be
3 home by 9:45. He would give it some time.

4 Q. Then he would call to check in later in the evening?

5 A. Right.

6 Q. So who was in charge when he would leave the restaurant?

7 A. It was nobody in charge. Everybody knew what they had to
8 do. They had all been working for us, the restaurant for so
9 long the responsibilities were understood. There was never an
10 issue of who needed to be in charge. Like I said, if anything
11 my dad was 10-minute cab ride away if a situation would have
12 arisen where he needed to be there.

13 Q. So one more follow-up question on the point of sale system.

14 How did it actually work? Because there was some
15 discussion both in your testimony and then in the testimony of
16 Eddie and Angel about the tickets that would be printed out.

17 Am I understanding this right that -- you are a waiter; right?

18 A. Not anymore.

19 Q. When you were a waiter, when you would take an order from
20 the customer, would you go to the point of sale device and
21 input that order and then that would generate a ticket in the
22 kitchen so they could start making the food; is that correct?

23 A. Right.

24 Q. It was done right when you received an order; right?

25 A. Not right when we received an order. Sometimes I get

H3h6pin11

Migliorini - cross

1 interrupted, another table asks for another glass of wine. It
2 was whoever took the order. Sometimes there was someone else
3 at the computer putting in an order.

4 Q. Right.

5 A. We only had one monitor, touchscreen. It was not like we
6 have multiple. It is a small space. You had to wait.
7 Sometimes would you stray off to get something else because you
8 wanted to make sure the customers were being tended to.

9 Q. My question really is that it was done basically
10 contemporaneously when the order was placed?

11 A. Yes. We tried to keep it --

12 Q. Okay. It was your testimony earlier that you never spoke
13 to your father about taking over the restaurant; is that
14 accurate?

15 A. Yes, it is.

16 Q. Even toward the end you never talked to him about it?

17 A. No. Because the day he was supposed to come home, I had
18 already left the hospital and I had gotten a phone call from my
19 sister telling me he had to have another emergency surgery and
20 I never actually spoke to him after that.

21 Q. Now, your testimony earlier that you never sat people after
22 11:00 p.m.; is that right?

23 A. Yes, it is.

24 Q. Even on weekends?

25 A. Even on weekends.

H3h6pin11

Migliorini - cross

1 MR. ELLIS: Your Honor, I have a series of documents I
2 would like to enter.

3 THE COURT: Tell me when it is convenient to do the
4 lunch break. We can do it now and I can wait on this.

5 MR. ELLIS: Up to you.

6 THE COURT: Let's take the lunch break. We'll break
7 until 2:15.

8 (Luncheon recess)
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H3h6pin22

A F T E R N O O N S E S S I O N

2:15 p.m.

THE COURT: You may continue, Mr. Ellis.

MR. ELLIS: Thank you, your Honor.

BY MR. ELLIS:

Q. I just wanted to touch upon something that we discussed earlier. You had testified earlier that you have since replaced all of the employees who -- or all the positions you have hired people to fill all of the positions that plaintiffs used to work at the restaurant; is that correct?

A. Yes, it is.

Q. Are the new employees paid similar salaries as the plaintiffs?

A. Similar, yes. But they are paid on an hourly basis.

Q. Do they punch in and out?

A. They don't punch in and out. We have a -- I have a application on my phone that I can log when they came in and when they leave. So they check in with me.

MR. ELLIS: I would like to introduce a series of documents, your Honor.

The first is a set of W-3s and W-2s that pertain to Frisoling, Inc., from 2010 through 2014.

THE COURT: Give it an exhibit number.

MR. ELLIS: Yes, your Honor. It is going to be Exhibit 18. I will bring you one in a second, your Honor.

H3h6pin22

1 Your Honor, I would also like to introduce as Exhibit
2 19 forms 1120-S for Frisoling, Inc., for the years 2010 through
3 2014. And as Exhibit 20 I would like to introduce NYC 3L
4 general corporation tax returns for Frisoling, Inc. for the
5 years 2011 through 2014.

6 THE COURT: You are offering 18, 19 and 20?

7 MR. ELLIS: Yes, your Honor.

8 THE COURT: Any objection?

9 MR. KUBLANOVSKY: I have not seen them, your Honor.

10 I have no objection.

11 THE COURT: They will be admitted.

12 (Plaintiffs Exhibits 18, 19, 20 received in evidence)

13 MR. ELLIS: The last exhibit I would like to introduce
14 is a spreadsheet that. This is a summation of the previous
15 Exhibits 18, 19 and 20 that I created.

16 THE COURT: Do you have a copy?

17 MR. KUBLANOVSKY: I do.

18 THE COURT: Any objection?

19 MR. KUBLANOVSKY: To the extent it is a demonstrative,
20 no, but the exhibits do speak for themselves. I would object
21 to the admission of this document speaking for the others.

22 THE COURT: What do you want me to do with it?

23 MR. KUBLANOVSKY: I would object to the admissibility
24 of this document on those grounds.

25 THE COURT: Have you seen this before?

H3h6pin22

1 MR. KUBLANOVSKY: I have not.

2 THE COURT: Have you checked it against the documents?

3 MR. KUBLANOVSKY: I have not, your Honor.

4 THE COURT: I don't have a foundation for admitting
5 this.

6 MR. ELLIS: Fair enough.

7 THE COURT: You are not a witness.

8 MR. ELLIS: Understood. If we might use it just for
9 the quick reference aspect with respect to the year 2014. That
10 is really the purpose of it.

11 THE COURT: It depends. What do you intend to do with
12 it, ask questions?

13 MR. ELLIS: About W-2s and tax returns.

14 THE COURT: Let's see what the questions are. It
15 should hopefully reflect what you want it to reflect.

16 BY MR. ELLIS:

17 Q. In Exhibit 18, Mr. Migliorini, in the bottom right-hand
18 corner there is Bates stamp. There is a number Frisoling0933
19 on the first page. If you turn to 9063, and these are in
20 numerical order per the Bates numbers. Actually, the last
21 document in the packet.

22 Do you recognize that document?

23 A. Yes, I do.

24 Q. What is that document?

25 A. That is my W-2.

H3h6pin22

1 Q. For the year?

2 A. 2014.

3 Q. Just for the record what is the total wages reflected in
4 box number one?

5 A. \$85,057.54.

6 Q. If we flip back to 9061, it is a W-2 for 2014 for Maria
7 Cintron with wages reflected in the amount of \$74,587.83.

8 If we flip back to document 9060, a W-2 for 2014 for
9 Fernando to Ortiz wages reflected in amount of \$51,876.82.

10 If we flip to 9062 this is a W-2 for 2014 for
11 Plaintiff Eddie Jaquez reflecting wages in the amount of
12 \$19,600.

13 THE COURT: Is this the duplicate of exhibits we
14 already have in evidence? Is this the same as what is in your
15 binder?

16 MR. ELLIS: Yes. It is for ease of reference. It is
17 the W-2s and 3s reflected in chart and then the 1120s and then
18 all of the New York City returns.

19 THE COURT: Is there something in 18 that is not
20 already in evidence?

21 MR. ELLIS: Yes. There are quite a few documents in
22 Exhibit 18 that are not already in evidence.

23 THE COURT: All right.

24 BY MR. ELLIS:

25 Q. So if we turn to document 9058 this is one of the documents

H3h6pin22

1 previously entered into evidence. It is W-2 for 2014 for
2 Robinson Ortega Diaz for a total of 6,000.

3 If we go to document 9059, a W-2 for 2014 for
4 Plaintiff Angel Guayllasac showing total wages of 19,200.

5 If we're to do some math with all of those W-2s, which
6 are all of the W-2s produced in the matter for 2014 and we sum
7 all those sums, we get the sum \$256,322.49.

8 Now, if we turn to document 9057, do you recognize
9 this document, Mr. Migliorini?

10 A. I don't.

11 Q. Did you deal with the taxes for the year 2014, the company
12 taxes Frisoling, Inc.'s taxes for 2014?

13 A. I did not. We had an accountant handling that.

14 Q. At that point your father already passed away and you were
15 by your own admission running Frisoling, Inc. at that point; is
16 that correct?

17 A. Yes.

18 Q. So you didn't review any of these documents before your
19 accountant filed them; is that your testimony?

20 A. I looked at the documents. I don't recall -- I don't
21 recall this document itself.

22 Q. Do you know what a W-3 is?

23 A. I don't actually.

24 Q. For the record a W-3 a summation of W-2s, which is why if
25 we add up all of those W-Ss we get \$256,322.49.

H3h6pin22

1 If we look at document 9057, on that W-3 we see that
2 number in box one, 256,322.49; is that correct?

3 A. Yes.

4 Q. Now, if we turn back one page to document 9506, this is a
5 W-3C, which is a correction on the W-3 for Frisoling, Inc. for
6 the year 2014. If we look at box one, there is a different
7 number. It is 211,522.49. Again, if we do some math and we
8 subtract that number 211,522.49 cents, if we subtract that
9 number from from the number on the W-3 at 9057, that number was
10 \$256,322.49, the difference is \$44,800.

11 If we add up the W-2s for the plaintiffs -- Eddie
12 Jaquez, Robinson Ortega Diaz and Angel Guayllasac for 2014, if
13 you add 19,600 plus 6,000 plus 19,200 you yield \$44,800.

14 So my question to you first of all is why was this
15 form W-3 C submitted?

16 A. I don't know.

17 Q. Did your accountant talk to you about it?

18 A. No, they did not.

19 Q. You don't recall having a conversation with your accountant
20 that there was a problem with your taxes and that a correction
21 needed to be filed for 2014?

22 A. No, I do not.

23 Q. Do you know why your accountant would have filed this
24 document without your permission?

25 A. I do not.

H3h6pin22

1 Q. Do you have any ideas as to why this document would
2 subtract the amount of plaintiffs' declared wages?

3 A. I do not.

4 Q. The other thing I want to point out --

5 MR. ELLIS: I actually should have done this earlier,
6 your Honor.

7 Q. The one person who I left off earlier when I was reading
8 off the W-2s was Fernando Ortiz. 9060 is the document. This
9 is the W-2 2014 for Fernando Ortiz reflecting wages of -- I did
10 do this \$51,876.82.

11 Just as a basic question why does your W-2, Maria's
12 W-2, and Fernando's W-2 all contain cents, decimal points; do
13 you know?

14 A. Because as far as I can gather the tip amounts would have
15 had change involved in them. They weren't exact amounts at the
16 end of each night. Some people left tips to round up to \$100
17 on a tab. They would leave change. Tip amounts had change in
18 them.

19 Q. Did you ever pay Luis Pineda in change?

20 A. No. We rounded up for Luis and rounded down for ourselves.

21 Q. So is it also then your testimony that no tips are
22 reflected for any other employees aside from yourself, Maria
23 Migliorini Cintron and Fernando Ortiz?

24 A. Yes.

25 Q. I would like to turn to document 19 form 11-S for the year

H3h6pin22

2011.

A. Which one is 19?

THE COURT: It has a yellow sticker.

THE WITNESS: Yes.

Q. We're going to have some flipping back and forth.

So if we go to document 18, this is the W-2s and W-3s for the year 2011. If we go to document 9040, this is the W-2 in 2011 for your father Renato Migliorini. At the bottom is reflected wages in the amount of \$50,000. If we turn to the next page at the top, document 9041, this is the W-2 for Peter Migliorini in 2011 reflecting wages of \$81,440. If we go to the next document 9042, at the bottom it this is the W-2 for Maria Cintron, 2011, reflecting wages of \$73,170.

If we compare those numbers and if we turn then to Plaintiffs' Exhibit 20, the NYC form 3-L general corporate tax return for the year 2011 and if we turn to 9091 at the bottom, the salaries and all other compensation received from the corporation by corporate owners are listed. Specifically it states Peter Migliorini received \$28,240 and that Maria Cintron received \$27,720 and that Renato Migliorini received \$50,000.

THE COURT: I didn't catch your page?

MR. ELLIS: 9191 in Exhibit 20.

THE COURT: 9191 of 20?

MR. ELLIS: Yes, at the bottom.

Q. My question to you, Mr. Migliorini, is why is it that your

H3h6pin22

1 father's income on his W-2 for 2011 matches this New York City
2 general corporate tax return but that the amounts do not match
3 for yourself and your sister?

4 MR. KUBLANOVSKY: Your Honor, I am going to object to
5 the question. Earlier Mr. Migliorini testified that he had
6 never seen any tax documents for the corporation and was not
7 involved in the preparation of any of the tax documents for the
8 corporation until after he became an owner.

9 THE COURT: He can explain that if he would like. He
10 can answer the question if he understands it.

11 A. I do and I have never seen these documents before and I
12 don't know what -- why there is a difference on that.

13 Q. If we turn back in Exhibit 18 to page 9045, it is a W-2 for
14 2012 at the bottom for Renato Migliorini reflecting wages of
15 \$21,000.

16 If we turn to the next page 9046, the top is your W-2
17 for 2012, Peter Migliorini, showing wages in the amount of
18 \$80,066.

19 If we turn to the next 09047 at the bottom we have a
20 w-2 for Maria Cintron for 2012 showing wages in the amount of
21 \$72,471.

22 Again, if we turn to Plaintiff's Exhibit 20 at page
23 9155, at the bottom again this is the Frisoling, Inc.'s New
24 York City tax return for the year 2012. Again, salary and all
25 the compensation received from the corporation for the

H3h6pin22

1 shareholders. And it lists Peter Migliorini received \$27,930
2 and Maria Cintron received \$27,930 and Renato Migliorini
3 received \$21,000.

4 So again if we can compare this New York City tax
5 return to the W-2s, again we're faced with the same scenario
6 where your father's income is the same as stated on the W-2 and
7 in this tax return, but there is a difference, and quite a
8 significant one for yourself and your sister.

9 Do you know why that is?

10 A. I do not.

11 Q. Do you know why Fernando was treated differently for tax
12 purposes?

13 MR. KUBLANOVSKY: Objection to the form of the
14 question.

15 THE COURT: Overruled. He can answer if he knows.

16 A. I don't understand. What do you mean treated differently?

17 Q. You testified that his tips are reported as income and you
18 also testified that for at least for Mr. Pineda that his tips
19 are no reported as income.

20 My question is why are some employees' tips reported
21 as income and some are not?

22 A. Because as I knew it Luis Pineda was here in this country
23 illegally and did not have a social security number to file
24 paperwork for that.

25 Q. You decided not to pay him -- not report the tips that he

H3h6pin22

1 received because of that?

2 A. I didn't decide that. My dad and the accountant decided
3 that. I don't know how that got established. I just know that
4 he didn't have a social security number to report it after I
5 took over.

6 Q. Did he ever attempt to give you a tax ID number?

7 A. No, he did not.

8 Q. What about other plaintiffs, what was your understanding as
9 to why Eddie Jaquez one number was reported on his W-2 and
10 another number you claim he was actually paid?

11 A. Because he told me that the deal he had with his father was
12 to be on books for \$400 a week.

13 Q. Now, earlier you testified that when orders would come in,
14 you would put them into the point of sale system
15 contemporaneously with when those orders were placed; is that
16 correct?

17 A. Yes.

18 MR. ELLIS: Your Honor, I would like to introduce
19 Plaintiffs; Exhibit 22. This is a selection. We produced an
20 8400-page document of all the receipts from Piccolo Angolo
21 covering two and a half to three years. This a selection from
22 this. I have a summation similar to the other. I don't know
23 if there is an objection to that. I would like that marked
24 into evidence as well.

25 THE COURT: Mr. Kubanovsky.

H3h6pin22

1 MR. KUBLANOVSKY: I never seen the summation. I would
2 object to this.

3 THE COURT: Object to which?

4 MR. KUBLANOVSKY: Your Honor, I object to I guess 23,
5 the sheet that was created by counsel for plaintiffs. I
6 believe that also this characterizes by the title at the top
7 what was placed when orders was placed or assumes facts not in
8 evidence for that purpose. So I have no objection to the
9 compilation, which is Exhibit 22, but I do have the objection
10 to the admissibility of the document that was created by
11 counsel.

12 THE COURT: Let me start with 22. 22 will be admitted
13 into evidence.

14 (Plaintiffs' Exhibit 22 received in evidence)

15 BY MR. ELLIS:

16 Q. We can pick a random page or start at the top. Let start
17 at the top. This is document 3837. This shows an order was
18 placed at 12:7 a.m.

19 A. Sorry. Where am I finding that number?

20 Q. The first -- the very first sheet.

21 A. I don't have that. The same as the other pages where it
22 says Friz?

23 Q. Yes.

24 A. Mine says 223 on the top.

25 THE COURT: Let's save some time here. You are giving

H3h6pin22

me Plaintiffs Exhibit 22?

MR. ELLIS: Yes.

THE COURT: Plaintiffs Exhibit 22 represents the ticketed items of what orders were placed after midnight?

MR. ELLIS: Correct. Each sheet.

THE COURT: How many are in this stack?

MR. KUBLANOVSKY: Your Honor, I would object to that characterization of when the orders were placed. The witness has not testified as to the times reflect when the orders were actually placed.

THE COURT: That is what I am asking. Is that what he offered this as? It is in evidence.

MR. ELLIS: Yes, your Honor.

THE COURT: How does that represent that?

MR. ELLIS: Well, the version I had had some documents. On the top sheet it should be Friz00223.

THE COURT: Yes.

MR. ELLIS: And in the middle we have -- or excuse me the bottom invoice number 493. This is dated April -- March 8th, 2013, and it shows an order placed at 12:09:43 a.m.

MR. KUBLANOVSKY: Your Honor, there is date and time. There is nothing to indicate when the order was placed.

THE COURT: The document is in evidence. I am trying to figure out what I am supposed to be looking at. Take one and you ask him whether or not what is on this document. How

H3h6pin22

1 many of these are there that you have given me?

2 MR. ELLIS: Your Honor, this was -- one of my
3 paralegals compiled this. I don't know the exact number of
4 pages in this. The summation that I created --

5 THE COURT: How many orders in the summation?

6 MR. ELLIS: 42.

7 THE COURT: Does this represent 42 orders?

8 MR. ELLIS: No. Much more.

9 THE COURT: Your summation is not --

10 MR. ELLIS: Exhaustive.

11 THE COURT: Not the total of these documents?

12 MR. ELLIS: No.

13 THE COURT: These documents are supposed to be what?

14 MR. ELLIS: Each of these documents in 22 has at least
15 one order that was placed after midnight.

16 THE COURT: So what is the reason why it is not on the
17 chart that is not admitted?

18 MR. ELLIS: There is no good reason, your Honor. I
19 and didn't have time.

20 THE COURT: That is what I am trying to follow.
21 Because then there is a legitimate objection to 22. 23 doesn't
22 accurately give me what is reflected in 22.

23 MR. ELLIS: Correct.

24 THE COURT: So 22 you are offering this as the tickets
25 that show orders that were placed after midnight?

H3h6pin22

MR. ELLIS: Correct.

THE COURT: How many of these tickets are in this pile over what period of time approximately?

MR. ELLIS: The first document is March 7, 2013 and the final document is dated December 20th, 2015.

THE COURT: They are in that order?

MR. ELLIS: Yes, they are. They are in chronological order, your Honor. Again, this is just excerpts from an 8400-page document.

THE COURT: If there some relevant information on here that you want to ask this witness about, then ask him whether he can verify or not verify whether it is what it purports to be.

BY MR. ELLIS:

Q. Let's just take the first page Friz00223 and let's look at invoice number 493.

Is this date timestamp accurate that an order was placed at 12:09 a.m. on March 8th, 2013?

A. It is not accurate. Because these are not the kitchen tickets. The way the point of sale system works, these are reprints of customer invoices that they were used to pay the bill. The way the system works is a ticket is opened. It could be opened at any period of time. A drink can be entered on that. That opens the ticket on the customer invoice. When food orders are placed, you press send and the ticket goes to

H3h6pin22

1 the kitchen. The ticket stays open until we close said ticket.
2 That means when the customer paid and I need to free that table
3 up for another customer.

4 So as you can see on the ticket invoice above 492 that
5 ticket was closed and given to the customer at 9:10 p.m. The
6 ticket underneath wasn't closed on the point of sale system
7 until 12:09 p.m. That does not mean that the order went in at
8 12:09 p.m. It means it was physically closed on the computer
9 system as in the table -- the payment process was paid.

10 So there could be times where a table would remain
11 open because they were the last table and we didn't need to
12 free it up and it just stayed open until we hit the table and
13 the way the payment was paid. So in this case this table was
14 probably in the time frame of closing the ticket around 9:20 to
15 9:10 p.m. right after the previous ticket. That ticket was
16 processed. So however the 492 was paid it was put into the
17 system either credit card or cash and it was closed. That time
18 indicates what time the actual ticket was closed.

19 So the one at 12:09 p.m. doesn't mean anything as to
20 when the order was placed in the kitchen. He simply means that
21 is when we physically closed the ticket for the processing of
22 the payment.

23 Q. That is when the customer paid then?

24 A. No. The credit card system and the computer system are not
25 integrated. They can pay with a credit card. We have to

H3h6pin22

1 physically press the table, press how the table was paid so.

2 In the case of a credit card, I don't necessarily have to close
3 that out. The only time I have to close that out is when I
4 want to close out the end of -- the end -- when I want to close
5 out the shift for myself.

6 Q. So is it your testimony then that you would leave all these
7 tickets open until the end of the night and then close them all
8 out at the end of the night?

9 A. Not all of them. Some of the ones towards the end paid on
10 credit cards. As I was trying to get other things done, I
11 could leave them open because I didn't need to free up the
12 table to place another order. It could sit there until I was
13 ready to leave and shut down the computer. That was more
14 accurate to when I was leaving and locking up.

15 Q. If we turn Friz00903.

16 A. I don't have that.

17 THE COURT: On which exhibit?

18 MR. ELLIS: Again, this is 22, your Honor.

19 THE WITNESS: I don't have that.

20 THE COURT: 00 what? I don't think I have it either.

21 MR. ELLIS: 903.

22 THE WITNESS: I don't have it.

23 THE COURT: There not such a document.

24 MR. ELLIS: It is before the thousands, your Honor. I
25 think you are looking at 8,000, 7,000.

H3h6pin22

1 THE COURT: I am looking at the whole thing.

2 MR. ELLIS: It is towards the beginning.

3 THE COURT: The first document I have is 00223.

4 MR. ELLIS: Yes.

5 THE COURT: How much farther is that is the 009.

6 MR. ELLIS: About that much further (indicating).

7 Maybe 20 page.

8 THE COURT: 903?

9 MR. ELLIS: Yes.

10 THE COURT: Down in the corner it has 820?

11 MR. ELLIS: Yes. Specifically if we all look at
12 invoice 2610.

13 MR. KUBLANOVSKY: Can you confirm with the witness he
14 has the page.

15 THE WITNESS: Yes, I do.

16 BY MR. ELLIS:

17 Q. So invoice 2610 dated May 18th, 2013, 12:27 a.m. This
18 shows a credit card charge here on the left-hand side cash zero
19 credit 223.08, which matches the grand total.

20 What is that credit number and why does it match the
21 grand total?

22 A. Because that check was closed out to a credit card.

23 Q. As opposed to cash?

24 A. Correct.

25 Q. Did these people pay at or about 12:27 a.m.?

H3h6pin22

1 A. Not necessarily.

2 Q. What do you mean "not necessarily"?

3 A. I could run a credit card at 11:20 and close out the tab on
4 the point of sale machine at 12:27. It wasn't an integrated
5 system. The credit card machine was separate from the point of
6 sale. So everything was done separate. All that simply
7 indicated was that it was a credit sale.

8 Q. What does the timestamp mean, 12:27 a.m.?

9 A. That is when I closed the table on the point of sale.

10 Physically hit payment and how it was paid.

11 Q. Why would you wait until the end of the night to do that?

12 A. It was irrelevant to any of the end of the night other
13 things that I had to do. It was simply on the computer. The
14 computer order was separate from the credit card machine. The
15 credit card machine could print its own reports. I didn't need
16 it to print anything for the any of the tips or anything like
17 that. The computer -- really we didn't use the computer except
18 for placing orders and printing invoices for the customers. It
19 was two separate entities, the credit card machine and
20 computer.

21 Q. Say that again. When you say "computer," are you talking
22 about the point of sale system?

23 A. Yes.

24 Q. You only use the computer for what again?

25 A. To place orders and print invoices for the customers.

H3h6pin22

1 Q. Why would you print invoice for your customers?

2 A. So they knew what to pay.

3 Q. Oh, you are talking about the check?

4 A. Right. An invoice.

5 Q. When they requested the check, that is what are you talking
6 about?

7 A. That is what these are copies of, customer checks.

8 Q. Doesn't it tell you on the check what time -- it gives you
9 a date and time on the check?

10 A. Correct, when I print it for the customer. This is a copy
11 of the checks that involves them being closed. So for instance
12 if I had not closed a table and a customer asked for a -- I am
13 sure in here you may find that some were closed in the
14 afternoon. Sometimes we forgot to close a table. You will see
15 dates that is a 2:00 p.m. or 3:00 p.m. That is the next day
16 when we started up the program, we realized, oh, we forgot to
17 close Table 24, which is the most popular table. I forgot to
18 do that. Let me close that now so I can do end of day, which
19 we did at the beginning of each shift. We didn't have a
20 printer. That needed a computer printer. We had to take that
21 out and put that on the bar. It is rather large. It wasn't
22 from the regular small invoice printer.

23 Q. So at the end of the night after everyone was done and all
24 the plaintiffs were done with their work, did you and they
25 leave at around the same time?

H3h6pin22

1 A. Not always.

2 Q. How often?

3 A. I was usually the last person out.

4 Q. How long before you would leave would they leave?

5 A. It could be up to two hours.

6 Q. What would you do during those two hours?

7 A. Some times friends would come to see me at the end of the
8 night and we would be sitting there talking, having a glass of
9 wine.

10 Q. What if they wanted to put in an order?

11 A. Never. The kitchen was closed. The kitchen was closed.

12 Q. So if they did want anything, it would never show up in
13 these records?

14 A. I never ordered any food after the kitchen was closed.

15 Q. Do these records only show orders that were placed with the
16 kitchen?

17 A. Yes.

18 Q. What was the latest that you ever saw an order placed with
19 the kitchen?

20 A. The latest I ever saw an order placed with the kitchen was
21 around 11:00 p.m.

22 Q. Yesterday Fernando Ortiz testified that on Fridays and
23 Saturdays that the last reservation at the restaurant was taken
24 at 11:00, 11:30 p.m.; is that correct?

25 A. No, it wasn't.

H3h6pin22

1 Q. What time is the last reservation on Fridays and Saturdays?

2 A. Every day the last reservation was 10:30. In the way of
3 reservations even now we have an online system and every day,
4 except for Sunday, the last reservation you can make is 10:30.
5 That doesn't include walk-ins, but there were no reservations
6 after 10:30.

7 Q. Yesterday Fernando Ortiz testified that the restaurant was
8 closed on Fridays and Saturdays at midnight; is that correct?

9 A. Closed as in locking the door, yes.

10 Q. Do you always lock the door at midnight on Fridays and
11 Saturdays?

12 A. Not always. As I said before sometimes I would stay later
13 by myself or with friends.

14 Q. Yesterday Fernando testified that the average amount of
15 tips that he would receive were about 200 to \$220 a day; is
16 that accurate?

17 A. I was not always there when Fernando was collecting tips so
18 I --

19 Q. Did you ever see his tips?

20 A. I did for three nights a week. I split them with him.

21 Q. So on average during the three nights a week and you would
22 split tips were your tips the same?

23 A. When we split them they were the same. But not an average.
24 Your averages -- you are asking for an average on a small
25 restaurant that is a local restaurant that business is affected

H3h6pin22

1 by weather, the seasons, and the time of the week, and the
2 amount of money that the customers spend. Nothing in our
3 restaurant was ever hard. We weren't -- we're not a Bennigans
4 in that sense where things were set up that way. Everything
5 would vary with our customers and some customers were very
6 generous and some were not as generous. It varied greatly.

7 Q. It would vary greatly between you and Fernando even on the
8 same day?

9 A. No. The amount of tips on a nightly basis would vary
10 greatly.

11 Q. when it was just you when Fernando working, you received
12 the same amount of tips for that day; is that correct?

13 A. Minus Luis's 15 percent, yes.

14 Q. On days where you and your sister and Fernando were
15 working, all three of you would receive the same amount of
16 tips; is that correct?

17 A. No.

18 Q. How would that differ who received more? Who received
19 less?

20 A. There were -- either myself or Maria and Fernando split the
21 tips. It wasn't the three of us ever. It was Fernando and
22 Maria or Fernando and myself. Minus the 15 percent for Louis
23 every night.

24 Q. So it never happened that yourself, Maria and Fernando
25 would split the 85 percent remainder?

H3h6pin22

1 A. Never.

2 Q. What was the latest you ever saw an order go into the
3 kitchen?

4 A. 11:15 was the latest I ever seen an order go into the
5 kitchen.

6 Q. Why would plaintiffs lie and say they were paid less than
7 they were really paid?

8 A. I don't know. I don't know why they quit the night that
9 they quit. And I still don't know what -- what we're even
10 still doing here when I considered them and we considered them
11 part of our family and we always felt we treated them above and
12 beyond what was necessary.

13 Q. I want to turn briefly back to Angel Guayllasac. In your
14 mind what was it that made him a manager?

15 A. He handled all of the inventory in the restaurant. And
16 then when it comes to the kitchen, it is -- the kitchen is a
17 very organized, disorganized area. There is a lot of things
18 going on at once and you need someone to conduct the orchestra
19 in the kitchen. That was his job, to conduct the orchestra in
20 that kitchen and manage how that kitchen operated. In the
21 sense you cannot have in a kitchen that size -- you cannot have
22 three people taking a ticket and looking at it. It is not
23 optimal. It is not functional. I know that for a fact because
24 I am doing that myself. You need one person to be the
25 conductor and to operate the kitchen and to tell each

H3h6pin22

1 instrument when they need to be played and at what time. That
2 is the best analogy I can give you when it comes to the
3 kitchen. That was his job.

4 Q. You testified earlier that there were times when neither
5 you nor your father were at the restaurant; correct?

6 A. No, that is not true.

7 Q. You didn't work on Sundays; isn't that true?

8 A. When my dad was alive, he was there all day Sunday.

9 Q. There was never a time then where neither you nor your
10 father -- before your father's death obviously -- when neither
11 you nor your father were at the restaurant?

12 A. No. My dad didn't feel comfortable leaving my sister there
13 alone.

14 Q. After your father passed has there been a time when you
15 haven't been to the restaurant?

16 A. Very rarely.

17 Q. During those rare occasions, who is in charge?

18 A. I was still.

19 Q. Even though you are not there?

20 A. I was 15 minutes away.

21 Q. What if something came up and nobody could get ahold of
22 you?

23 A. My cell phone is always on. My home phone is always on and
24 I am 15 minutes away.

25 Q. You testified earlier that each of the stations in the

H3h6pin22

1 kitchen has a very specific function, role, and that the person
2 who works at that station has a very specific duty associated
3 with that station; is that correct?

4 A. Yes.

5 Q. What are those three stations again?

6 A. Starting from the left of the kitchen, the first station
7 has two low boy refrigerators and in them are the poultry and
8 meat. That's only a two-door low boy. Then there is another
9 two-door low boy. It is three-door low boy with a table. The
10 left was the meat station. The middle was where the fish was
11 stored. The right was the pasta.

12 So Eddie's station is where he had all the meat and
13 where he prepared for veal paries, chicken parms, anything that
14 had to go in the boiler or meat that had to be cooked. That
15 was his job. And any hot appetizers.

16 And Angel was in charge of the fish and pasta, cooking
17 them. Israel made any cold appetizers and salads.

18 Q. My question then is if it is extremely clear what the
19 function of each station is and what the duty is of each person
20 who is working at each station, why does there need to be a
21 conductor of the orchestra?

22 A. I don't know if you ever actually worked inside of a
23 kitchen, but tickets come in at random periods of time. Some
24 come with appetizers, some don't. Eddie may be preparing a hot
25 appetizer, say, off the top of my head baked claims that go

H3h6pin22

1 into the boiler. Angel or myself will get a ticket without any
2 appetizers. Two of them were chicken parms, two of them were
3 pastas. Angel needed to tell Eddie, I need two chicken parms
4 and I need -- the term I use now is I need them to fly now,
5 meaning prepare them now. Don't wait. Whereas when you order
6 the baked claims, he could have two chicken parms and you would
7 tell Eddie -- I phrase it now in the kitchen to my current
8 employees if I need four chicken parms but I need two to fly
9 and I need two don't fly or hold them. So prepare them but
10 have them ready so when the wait staff says table so and so is
11 done with their baked claims, we need their food, Angel with
12 say to Eddie, fly those two chicken parms that you are holding
13 for me.

14 Q. When you are in the back working in the kitchen, do you see
15 every ticket that comes through as it comes through?

16 A. I do because I am now the person in charge of the kitchen.

17 Q. But you said that it is really chaotic. So isn't it
18 possible you would be busy and you wouldn't see a ticket that
19 comes through?

20 A. No. Because the printer has a very distinct printing sound
21 to it. It is a very loud printer. In the back of my head is a
22 bad dream some nights from busy nights. You hear that printer
23 and you just want it to stop. So, no, you know when it is
24 coming through even when you are busy. As my job I have to
25 know when that ticket is coming through. I have to take it

H3h6pin22

1 down and read it and know what it needed and that was Angel's
2 job as well.

3 Q. Did you ever see Eddie read out a ticket or Israel?

4 A. No, I did not.

5 Q. What would you have done if you had seen that?

6 A. It wasn't my place to tell them anything if I had seen
7 that. That was Anglo's job to handle what was going on in the
8 kitchen.

9 Q. Could he have delegated that responsibility to Eddie as
10 well?

11 A. If that was his choice he could have, but that that would
12 have been his choice not my choice. I don't think he would
13 have. Knowing what I know now, you just don't function that
14 way. It is not feasible to function that way. Our kitchen
15 isn't set up like that.

16 I know Eddie's testimony he used the word "line." We
17 don't have a line. Some kitchens, bigger restaurants, kitchens
18 the size of my restaurant, have lines. Various tickets come
19 out of various machines. We don't operate lines. One ticket
20 comes out. Not everybody getting their own ticket. That is
21 what that means by a line. We don't have lines. We have one
22 station for the printer. One ticket for the order. One person
23 handling the ticket.

24 Q. You testified earlier that Angel called in sick sometimes.
25 How would the kitchen function on days when he was sick?

H3h6pin22

1 A. I would come in to work the kitchen.

2 Q. Again, just to touch upon this one last time. You
3 testified there were never days when you and Maria and Fernando
4 collectively split the 85 percent of tips not given to Luis?

5 A. Correct.

6 MR. ELLIS: No further questions, your Honor.

7 THE COURT: Do you have any further questions?

8 MR. KUBLANOVSKY: No, your Honor.

9 THE COURT: You can step down, sir.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 THE COURT: Do you have anything further on behalf of
13 defendant.

14 MR. KUBLANOVSKY: No, your Honor.

15 Defense rests.

16 THE COURT: Anything further from plaintiffs?

17 MR. ELLIS: No, your Honor. Plaintiffs rests.

18 THE COURT: How do you want to proceed at this point?
19 Do you want to argue? Do you want to submit something? How
20 did you want to proceed?

21 MR. KUBLANOVSKY: Your Honor, Mr. Ellis and I had a
22 chance to discuss this, but we believe at this point there is
23 no need for summation, however, that posttrial briefing is
24 something that we would want to submit to the Court.

25 THE COURT: What kind of schedule would you like?

H3h6pin22

MR. ELLIS: We need to obtain the transcripts.

45 days, your Honor.

THE COURT: How are you going to do your submissions?

MR. ELLIS: How would you like them?

THE COURT: It's up to you. Are you going to do it simultaneous. One is going to submit and the other one afterwards? What are you going to do?

MR. ELLIS: We would like to do simultaneous posttrial briefs with a chance to respond.

THE COURT: My suggestion would be this: How much time do you want to respond after you make the submission?

MR. ELLIS: 15 days to respond, your Honor.

THE COURT: Why don't we do this: You can make your summations either by the 28th of April or the 5th of May.

MR. KUBLANOVSKY: 5th of May, your Honor.

THE COURT: 5th of May I will give you until the 23rd of May. So it can be before Memorial weekend so you don't have to work on Memorial Day weekend. That will be a Tuesday. That will give you some time to get that to me. May 5th for simultaneous submissions, responses May 23rd.

I will move as quickly as possible to give you a decision.

MR. ELLIS: Thank you, your Honor.

MR. KUBLANOVSKY: Thank you, your Honor.

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INDEX OF EXAMINATION

Examination of:	Page
PETER MIGLIORINI	
Direct By Mr. Kublanovsky	291
Cross By Mr. Ellis	368.

PLAINTIFF EXHIBITS

Exhibit No.	Received
4	345
16	373
17	375
6	380
9	381
13	382
18, 19, 20	389
22	399

DEFENDANT EXHIBITS

Exhibit No.	Received
D	291
E	382